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# Taxation of Foreign Nationals: Schedule E - Tax Equalisation

## Employees Resident But Not Ordinarily Resident In The United Kingdom - Liability Under Cases II And III Of Schedule E

An employee resident but not ordinarily resident in the UK is liable to UK tax under Case II Schedule E on emoluments in respect of duties performed in the UK. Such employees are also liable under Case III Schedule E on emoluments for duties performed outside the UK but only to the extent that the emoluments are received in the UK.

Paragraph 2 of Statement of Practice 5/84 (SP5/84) states that where the duties of a single office or employment are performed both in and outside the UK, an apportionment is required to determine how much of the emoluments are attributable to UK duties and therefore liable to tax under Case II Schedule E. Apportionment of emoluments is essentially a question of fact and the Inland Revenue accepts time apportionment based on the number of days worked abroad and in the UK except where this would clearly be inappropriate.

**editorial**

Welcome to my first issue as Editor of Tax Bulletin.

Although I am unable to enter into personal correspondence with readers about Tax Bulletin or its contents, I am always interested in hearing about what topics you would like us to cover, as well as your views on past and current articles and, I am always open to suggestions for future publications. Readers can e-mail or write to me at the address given on the final page.

All articles published in Tax Bulletin publicise our view of the law and indicate how the Inland Revenue will apply the law in a particular area. Our view is not always accepted and there is of course nothing to preclude an argument being taken on appeal to the Commissioners or Courts.

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Aidan Close

In addition to salaries and benefits, employers may also provide their employees with the benefit of tax equalisation. This usually means that the employer undertakes to meet on the employee's behalf any additional tax payable above the tax that the employee would have paid in his home country. It is well established that such payments made on behalf of employees form part of their emoluments. But there has been a difference of view between the Revenue and a number of accountancy firms about the extent to which such tax equalisation emoluments are attributable to Case II or Case III Schedule E.

The Inland Revenue's view is that tax equalisation emoluments are wholly referable to duties performed in the UK where the underlying tax liability is similarly wholly referable to duties performed in the UK. Therefore, where an employer pays liability under Case II Schedule E on an employee's behalf, the resulting tax equalisation emolument will itself be wholly chargeable under Case II Schedule E.

The Revenue's view was approved recently by a Special Commissioner in the case of *Perro v. Mansworth* (SPC286). The Special Commissioner stated that it was an inescapable fact that the payment of tax by the appellant's employer was an emolument in respect of UK duties since that tax was only payable because of the performance of duties in the UK.

Ms Perro's net emoluments were time apportioned in accordance with SP5/84 in order to find the net attributable to UK duties. The Inland Revenue's approach was to gross up this net figure of Case II Schedule E income on the basis that the payment of the tax was itself an additional emolument wholly referable to duties performed in the UK and chargeable to tax under Case II Schedule E.

The Special Commissioner did not consider the treatment of reimbursement of tax on income other than employment income chargeable under Case II Schedule E. The employer of a tax-equalised employee may reimburse UK tax on investment income or capital gains. Employers may also pay foreign tax liabilities on the employee's behalf. We have been asked for our view on the treatment of such reimbursements.

In the *Perro* case, time apportionment was the appropriate method for attributing the appellant's net emoluments to Case II Schedule E, as there was no specific attribution of salary or other benefits between UK and overseas duties. However, the tax equalisation emolument was in that case as a matter of fact wholly referable to duties performed in the UK, so time apportionment was clearly inappropriate. We consider that the approach approved by the Special Commissioner in *Perro* is in harmony with SP5/84.

When apportioning emoluments between Cases II and Cases III Schedule E, it is necessary first to consider whether those emoluments are wholly referable to UK or non-UK duties on

the facts. Clearly if this is so, there is no need to consider time apportionment. If the emoluments are not wholly referable either to UK or non-UK duties, then time apportionment will be necessary in accordance with SP5/84.

If an employer reimburses personal tax liability arising on non employment income such as bank interest, dividends or capital gains, then the first question is whether that reimbursement is an emolument that relates wholly to either UK or non-UK duties. We do not consider that the physical presence of the employee in the UK in order to perform employment duties is sufficient justification for treating such reimbursements as wholly in respect of duties performed in the UK. In the absence of unusual facts, we believe that such emoluments should be time apportioned. This will produce a net Case II emolument that will then need to be grossed up. The gross up will be on the basis that the payment of tax on an emolument within Case II of Schedule E is itself an emolument wholly chargeable under Case II Schedule E.

With regard to foreign tax reimbursements, the attribution between Cases II and III Schedule E will depend upon the facts and circumstances. If the foreign tax relates solely to overseas duties, then the payment of that tax by the employer will comprise an emolument wholly referable to duties performed outside the UK that cannot be charged to tax under Case II Schedule E. Alternatively, the foreign tax may be charged on worldwide income so that time apportionment is likely to provide the only practical mechanism for determining the attribution between Cases II and III Schedule E.

We have also been asked about the treatment of reimbursements of tax chargeable under Case III Schedule E. SP5/84 states that provided the emoluments assessable under Case II Schedule E are arrived at in a reasonable manner, the Inland Revenue are prepared to accept that Case III Schedule E liability will arise only where the aggregate of emoluments received in the UK exceeds the amount assessable under Case II Schedule E for that year. The amount assessable under Case III Schedule E is therefore restricted to the excess of the aggregate over the amount assessable under Case II Schedule E. We do not intend to depart from this practice.

Where the employer meets Case III Schedule E liability, the payment of that tax to the Inland Revenue will clearly be received in the UK. We believe that it is logical that the payment of the Case III Schedule E liability will itself be a Case III Schedule E emolument and as the tax payment will be received in the UK, the related gross up will also be wholly chargeable under Case III Schedule E.

We recognise that there can be significant practical difficulties in identifying whether an emolument relates solely to non-UK duties and therefore falls within Schedule E Case

III. In such cases, we would not generally dispute time apportionment between Cases II and III Schedule E on the basis of working days. If any emoluments were allocated solely to Case III Schedule E as attributable wholly to non-UK duties, we would expect evidence to be available to justify the attribution, in the event of a Revenue enquiry.

### Non Resident Employees

Some tax-equalised employees are not resident in the UK. They may perform substantive duties of their employment in this country. Unless the specific terms of a Double Taxation Agreement (DTA) confer an exemption from UK tax on UK source employment income, such employees will remain liable under Case II of Schedule E on emoluments in respect of duties performed in the UK. Emoluments for duties performed outside the UK will fall outside of the scope of Schedule E except in very limited circumstances. We believe that the same approach to attributing tax equalisation emoluments should be adopted for non-resident employees as for those resident but not ordinarily resident employees whose emoluments are apportioned between Cases II and III Schedule E.

The following simple examples are intended to illustrate the basic approach to tax equalisation emoluments described in this article. It is recognised that many cases will have much more complex facts and that the ensuing calculations will be similarly complex.

#### Examples

Tanya has been sent to the UK to work at her employer's UK branch for two years from 1 January 2002. She is resident but not ordinarily resident in the UK from the day of her arrival. In addition to her UK duties, her employer requires her to make regular and extensive visits to an overseas branch of its business in order to monitor an important project. Whilst assigned to the UK, Tanya is subject to her employer's policy on tax equalisation which provides for her to receive the same net salary and benefits as if she had remained in her home state.

During 2002-2003, Tanya performed the duties of her employment on 225 days. She spent 158 days working in the UK and 67 days working overseas. Net salary and benefits from her employment were £100,000 of which £60,000 was received in the UK. Her employer was obliged to pay her tax liabilities in accordance with its tax equalisation policy. For simplicity, all calculations assume that Tanya's income is chargeable to UK tax at 40%

#### Scenario 1

Tanya's only tax liability was incurred in the UK on the emoluments from her employment.

#### Calculation of UK tax for 2002-2003

Net salary and benefits	100,000
Less amount attributable to overseas workdays - 67/225 (30%)	(30,000)
Net attributable to the performance of UK duties	70,000
Tax equalisation emolument - gross up for UK tax at 4/6	46,666
Gross Case II Schedule E	116,666
Tax at 40%	46,666
Net Case II Schedule E	70,000
Liability under Case III Schedule E	
Case II	116,666
Received in the UK	
- 60,000 plus Case II tax of 46,666	106,666
Case III - SP5/84	Nil

#### Scenario 2

Facts as above but Tanya's employer also paid UK tax liability of £5,000 on her investment income. As the £5,000 is not directly referable to the performance of duties inside or outside the UK, it falls to be time apportioned in accordance with SP5/84. Therefore, the £5,000 has been added to net salary and benefits before calculating and deducting the amount attributable to overseas workdays.

### Calculation of UK tax for 2002-2003

Net salary and benefits - as before	100,000
Plus UK tax liability on investment income	5,000
Revised net salary and benefits	105,000
Less amount attributable to overseas workdays - 67/225 (30%)	(31,500)
Net attributable to the performance of UK duties	73,500
Tax equalisation emolument - gross up for UK tax at 4/6	49,000
Gross Case II Schedule E	122,500
Tax at 40%	49,000
Net Case II Schedule E	73,500
Liability under Case III Schedule E Case II	122,500
Received in the UK - 60,000 plus Case II tax 49,000 & other UK tax 5,000	114,000
Case III - SP5/84	Nil

### Scenario 3

Additionally, Tanya's employer pays overseas tax liability of £5,000 direct to an overseas tax authority. The overseas tax is referable solely to the performance of duties outside the UK and is therefore excluded from the Case II calculation.

### Calculation of UK tax for 2002-2003

Net salary and benefits - as before	100,000
Plus UK tax liability on investment income	5,000
Plus overseas tax liability on overseas duties	5,000
Revised net salary and benefits	110,000
Less overseas tax	(5,000)
Amount to be time apportioned	105,000
Less amount attributable to overseas workdays - 67/225 (30%)	(31,500)
Net attributable to the performance of UK duties	73,500
Tax equalisation emolument - gross up for UK tax at 4/6	49,000
Gross Case II Schedule E	122,500
Tax at 40%	49,000
Net Case II Schedule E	73,500
Liability under Case III Schedule E Case II	122,500
Received in the UK - 60,000 plus Case II tax 49,000 & other UK tax 5,000	114,000
Case III - SP5/84	Nil

### Scenario 4

Facts are the same as in Scenario 2 except that £70,000 out of the £100,000 net salary and benefits has been received in the UK.

### Calculation of UK tax for 2002-2003

Net salary and benefits - as before	100,000
Plus UK tax liability on investment income	5,000
Revised net salary and benefits	105,000
Less amount attributable to overseas workdays - 67/225 (30%)	(31,500)
Net attributable to the performance of UK duties	73,500
Tax equalisation emolument - gross up for UK tax at 4/6	49,000
Gross Case II Schedule E	122,500
Tax at 40%	49,000
Net Case II Schedule E	73,500
Liability under Case III Schedule E Case II	122,500
Received in the UK - 70,000 plus Case II tax 49,000 & other UK tax 5,000	124,000
Net Case III - SP5/84	1,500
Tax equalisation emolument - gross up for UK tax at 4/6	1,000
Gross Case III	2,500
Total gross emoluments - Cases II & III	125,000
Tax at 40%	50,000

### Further information

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## Schedule A: Computation of profits: Repairs to let property

Following the withdrawal, from April 2001, of extra statutory concession ESC B4 (maintenance and repairs of property obviated by alterations etc: Schedule A assessments) we have been asked for more guidance on what constitutes an allowable repair for Schedule A purposes.

### Background: Computation of Schedule A profits

New rules for computing the profits of a Schedule A business were introduced by Finance Act 1995 for individuals and by Finance Act 1998 for companies. Broadly speaking, the profits of a Schedule A business are now computed in the same way as the profits of a trade. This means that the starting point for the computation is a set of accounts drawn up in accordance with generally accepted accounting practice. The profit or loss shown by the accounts is then subject to any adjustments required or authorised by law.

In certain small cases the 'cash basis' can be used as an alternative to the 'earnings basis'. The circumstances are set out in paragraphs 90-92 of the Inland Revenue booklet IR 150 "Taxation of rents: A guide to property income".

Whatever basis is used the accounts have to be examined to see whether or not any expenditure falls to be excluded by specific tax legislation as explained in the relevant case law. Broadly speaking expenses are allowable provided they are incurred wholly and exclusively for the purposes of a Schedule A business and are not capital expenditure.

This article clarifies what type of expenditure on building work undertaken on a let property is allowable and what is not.

### Capital expenditure

The cost of the house or block of flats that is being let is capital expenditure and so is the cost of any additions or improvements. So if you add to the premises something that was not there before, for example if you build an extension or a new porch, this is capital expenditure. It does not matter how small the addition is. If you add an extractor fan or fit an additional cabinet in the bathroom or kitchen, this is also capital expenditure.

A landlord is most likely to incur capital expenditure before a property is let for the first time or between lettings. For example the landlord may decide to improve the property by creating ensuite facilities where there were none before. This is capital expenditure.

## Repairs to let property

To decide whether expenditure incurred on 'repairs' to property is allowable, the first step is to identify the 'entirety' that is being repaired. The doctrine of the 'entirety' has been well summarised by Buckley, LJ in *Lurcott v Wakeley* (1911) AER 41 as follows:

"Repair is restoration by renewal or replacement of subsidiary parts of the whole. Renewal, as distinguished from repair, is reconstruction of the entirety, meaning by the entirety not necessarily the whole, but substantially the whole subject matter under discussion ... it follows that the question of repair is in every case one of degree, and the test is whether the act to be done is one which in substance is the renewal or replacement of defective parts or the renewal or replacement of substantially the whole."

In the case of residential accommodation we accept that the 'entirety' will normally be the house or the block of flats that is let. So if your roof is damaged and you replace the damaged area, your expenditure is allowable.

Even if the repairs are substantial, that does not of itself make them capital for tax purposes, provided the character of the asset remains unchanged. For example, if a fitted kitchen is refurbished the type of work carried out might include the stripping out and replacement of base units, wall units, sink etc., re-tiling, work top replacement, repairs to floor coverings and associated re-plastering and re-wiring. Provided the kitchen is replaced with a similar standard kitchen then this is a repair and the expenditure is allowable. If at the same time additional cabinets are fitted increasing the storage space, or extra equipment is installed, then this element is a capital addition and not allowable (applying whatever apportionment basis is reasonable on the facts). But if the whole kitchen is substantially upgraded, for example if standard units are replaced by expensive customised items using high quality materials, the whole expenditure will be capital. There is no longer any relief for 'notional repairs', that is the notional cost of the repairs that would otherwise have had to be carried out.

What we regard as a repair will necessarily change with the passage of time to reflect technological improvements. This issue was considered in the tax case *Conn v Robins Brothers Ltd* (43TC266). As a result we accept that the replacement of a part of the 'entirety' with the nearest modern equivalent is allowable as a repair for tax purposes and not disallowable as improvement expenditure.

An example is double-glazing. In the past we took the view that replacing single-glazed windows with double-glazed windows was an improvement and therefore capital expenditure. But times have changed. Building standards have improved and the types of replacement windows

available from retailers have changed. We now accept that replacing single-glazed windows by double-glazed equivalents counts as allowable expenditure on repairs.

Generally, if the replacement of a part of the 'entirety' is like-for-like or the nearest modern equivalent, we accept the expenditure is allowable revenue expenditure.

### More information

A more detailed review of the types of expenditure that are allowed can be found in the Inland Revenue booklet IR 150 "Taxation of rents: A guide to property income". This is published on the Inland Revenue website. The relevant paragraphs are 132 to 136, 139 to 146, 153 to 161 subject to:

- No relief is now available for notional repairs.
- The replacement of single-glazed windows by double-glazed windows simply to meet industry standards is accepted as revenue expenditure.

### Double-glazing: Change of Revenue Practice

We now accept for both Schedule D and Schedule A that replacing single-glazed windows by double-glazed equivalents counts as allowable expenditure on repairs. (See article above entitled Schedule A: Computation of profits: Repairs to let property). This is a change of Revenue practice, which will take effect immediately, so that it applies in all cases where there is an open enquiry or investigation. For periods where Self Assessment applies an amended return will be accepted if the window for taxpayer amendment has not yet expired.

### interpretations

#### Depreciation in Trading Stock

We have been asked to explain how a recent judgement by the UK Law Lord Lord Millett in the Hong Kong Court of Final Appeal case of CIR v Secan (FACV No 9 of 2000) affects the treatment for tax purposes of depreciation included in trading stock.

#### What is depreciation in trading stock?

For financial statements properly to reflect business costs they have to take account of the wearing out or other reduction in the useful economic life of fixed assets. Depreciation is a measure of this and is charged against income in arriving at the commercial profit. For tax purposes depreciation of fixed assets is a capital matter and therefore should be added back.

Statement of Standard Accounting Practice (SSAP) 9 sets out the principles governing the valuation of stock. Stock is valued at the lower of cost or net realisable value. Cost should include "those overheads (including depreciation) which relate to production" (paragraph 20).

Where depreciation is taken into account in arriving at the stock valuation the taxpayer may argue that the commercial profit has not been reduced by the depreciation charged to stock. So the relevant depreciation should not be added back in the tax computations until it does reduce those profits. That will normally be when the stock is sold.

### Secan

The case concerned the capitalisation of interest into trading stock/work in progress. Secan was a property development company. It had been treating interest as a development cost and adding it to the cost of its property stock, so that it was carried forward each year. When it started making sales it decided that it wanted to rewrite the accounts retrospectively so that interest was set against profits of the year in which it was incurred. The case was about whether it could do that or not.

Towards the end of his judgement Lord Millett comments on the evidence given by Secan's accountant:

*"Mr Fong Hup explained how he prepared the taxpayer's accounts. He said that he debited the interest payable to the development cost account and took the figure directly into the balance sheet without putting it through the profit and loss account. The Court of Appeal took this to confirm what they could see with their own eyes, viz. that the interest had not been deducted in the profit and loss account.*

*In fact this evidence established that the interest was deducted in computing the taxpayer's financial results. It was debited, not to the profit and loss account, but to the development cost account, another revenue account, in which the costs of the development including interest were duly entered. Mr Fong Hup's statement that he took the figure straight to the balance sheet is an abbreviated version of the truth. It is true in the trivial sense that the development cost account was the source of the figure which he entered in the balance sheet for the value of property under development. But, as I have explained, although the two figures are the same they do not represent the same thing. The cost of the development is a debit: "property under development" in the balance sheet is an asset. Accountants do not possess a philosopher's stone which can turn a debit into an asset. The figure which Mr Fong Hup took from the development cost account represented the cost of the development; the figure which he entered in the balance sheet represented the value of the development. In the process he must be taken mentally to have set them off*

against each other, and because they cancelled each other out there was no net balance to bring into the profit and loss account.

*The taxpayer's accounts contain a note explaining the treatment of interest. This is required by the Companies Ordinance. Shareholders are entitled to be told whether interest has been capitalised and if so how much. They are entitled to know how much of the value of the assets shown in the balance sheet is attributable to capitalised interest, since this is a very weak indication of value. It is dependent on the directors' belief that the market value of the asset has appreciated since its purchase by an amount at least equal to the amount of interest which the company has incurred, and this may be optimistic. In the present case the note correctly shows the amount of interest payable as a debit and a like sum of capitalised interest as a credit. One figure represents the cost of interest taken from the development cost account. The other figure represents the matching amount of value taken to the balance sheet."*

### How this relates to depreciation in trading stock

Secan is not a precedent in UK law. But the relevant Hong Kong tax law is very close to UK tax law, and the relevant accountancy principles are pretty much the same. We believe that Lord Millett's judgement would have been in identical terms had the point arisen first in the House of Lords. So it is extremely persuasive.

In our view his analysis provides a complete answer to the assertion that, if depreciation of fixed assets is included in the valuation of stock, only the net amount of depreciation has been charged against profits, and so only that amount should be added back.

Where depreciation is included in trading stock taxpayers **are** deducting the full amount of depreciation in their profit and loss account and are bringing in a credit representing the value of the stock on the other side of the profit and loss account. The fact that the 'cost' or fall in value of the fixed assets has been included as part of the value to the taxpayer of the stock carried forward does not mean that the full amount of depreciation has not been charged to the profit and loss account. Further, even if the accounts show only the 'net' figure charged to profit and loss account, this is irrelevant. It is not a matter of accounting principle. Rather it is, in Lord Millett's words, "merely a matter of presentation".

Where an adjustment to the depreciation add-back in respect of depreciation in trading stock has been an accepted part of tax computations taxpayers will now have to move to the correct basis for computing taxable profits. The treatment for tax purposes of this 'change of basis' is covered by proposed legislation in this year's Finance Bill (clause 63 and Schedule 22).

## miscellaneous

### Trusts

#### Share Scheme Trusts

We have recently found that some trustees of share scheme trusts are unaware of their obligation to file a trust tax return if they have income or gains to declare. We require a trust tax return for each share scheme trust, including non-resident trusts with UK source income. These include:

- Qualifying Employee Share Ownership Trusts (QUESTs). That is, plans that comply with the provisions of Schedule 5 FA 1989;
- Share Incentive Plan trusts (SIPs), (formerly All Employee Share Ownership Plan trusts (AESOPs)). That is, plans that comply with the provisions of Schedule 8 FA 2000 as amended by Schedule 13 FA 2001;
- Any other employee share ownership trust.

If you have not notified the appropriate trust office of the existence of the trust, you should complete form 41G(Trust), which is available from any Inland Revenue Enquiry Centre or Tax Office, and return it as soon as possible to the relevant Inland Revenue Trusts Office.

#### Revised Leaflet IR152 – 'Trusts. An introduction.'

We recently published an updated version of IR152 - 'Trusts. An introduction.' Part of our Personal Taxpayer Series, the leaflet covers private family trusts and explains how trusts are created, the different sorts of trusts, how they are taxed and when tax is due under Self Assessment. Although written with the lay person in mind, we think many practitioners will also find the publication a useful source of reference.

### Revenue Prosecutions

The Inland Revenue has a policy of selective prosecution involving the most serious cases across the whole range of the tax system. The Board see this as an important part of its strategy to deter tax fraud and evasion. As part of the wider publicity for this strategy, details of Revenue prosecutions are occasionally published in Tax Bulletin

#### Tax Fraud Confiscation Order

##### David Robert Kerry

David Robert Kerry was made subject of a Confiscation Order of £417,444 at Hereford Crown Court by His Honour Judge Matthews on 22nd March 2002.

Kerry is currently serving a 4 year jail sentence after being found guilty on five counts of cheating the public purse in a

trial lasting nine weeks in April and May 2001. Kerry had concealed his interests in Buccaneer Spare Parts Ltd through an offshore parent company, Fork Holdings Ltd and ultimately an offshore Trust. BSP paid management charges which were wholly disproportionate to any limited services rendered by Fork to BSP. Kerry also used monies extracted to part purchase a yacht and pay credit card bills and school fees. The offences took place between 1st July 1978 and 30th June 1999 and were uncovered in an investigation by Special Compliance Office Solihull.

In arriving at the amount to be confiscated the Court ruled that the benefit to Kerry should not be measured by the tax and interest lost by the Inland Revenue, but by reference to the monies that Kerry had extracted from the company.

This is one of a series of cases where the courts have found that the Defendant has not simply benefited from the tax loss arising from the fraud. His Honour Judge Matthews reminded everyone that the purpose of the Confiscation legislation was "to deprive the defendant of the profit from his crime".

In considering the amount of realisable property available to meet any Confiscation Order made, the Court rejected Kerry's contention that he did not have any realisable interest in a number of properties in Lanzarote. Kerry had transferred his interest in a four bedroomed villa to his wife shortly after his arrest, together with his interest in a plot of land and a yacht berth.

The Court found that the transfers were effected as part of an attempt by Kerry to divest himself of his assets. The transfers were held to have been at an undervalue and as such the gift provisions of the Criminal Justice Act applied and the true market value of Kerry's interest in the properties were held to be part of his assets available to meet the Confiscation Order.

In addition Kerry was also ordered to pay £75,000 in costs and has been disqualified from being a director for 10 years.

#### **Colin Andrew Boundy & Monica Jean Boundy**

Colin Andrew Boundy and his ex-wife Monica Jean Boundy received jail sentences of 12 months and 3 months respectively at Plymouth Crown Court recently.

At earlier hearings they had both been found guilty of cheating the Inland Revenue out of £156,000 in income tax and national insurance contributions.

Mr and Mrs Boundy ran a courier business between 1991 and 1997 from premises in Roborough and Ivybridge. They used a variety of trading names including Driving Force and Point to Point Logistics. They made 'tax free' overtime payments to a number of employees, they also failed to send in returns of tax and national insurance deducted or, pay over the appropriate amounts to the Inland Revenue.

Monica Boundy pleaded guilty to her part in the fraud at Plymouth Crown Court in June 2001. Colin Boundy was found guilty after a two week trial, also at Plymouth Crown Court, in March 2002.

The investigations were carried out by Officers from Special Compliance Office, Bristol.

#### **Brothers Jailed In International Tax Investigation**

Brothers Sewa Singh Gill and Paramjit Singh Gill both of Walthamstow received jail sentences of 3 years and 20 months respectively recently.

They were sentenced after a 10 week trial at the Crown Court, at which both were found guilty on a variety of charges of cheating the public purse. The charges followed an investigation by Inland Revenue Special Compliance Officers into a business called 'Club Tropicana', which manufactures and sells sports and leisurewear and also rents out commercial property and run snooker halls.

During the course of the investigation special compliance officers travelled to India and, with the full co-operation of the Indian police interviewed a number of witnesses in Punjab including two village headmen who travelled to the U.K. to give evidence in the trial.

At the trial the prosecution alleged that deposits totalling £660,000 into the offshore accounts arose from unrecorded business receipts of Club Tropicana. The defence argued that deposits arose from farming income in India, the evidence of the headmen from Punjab helped to rebut this argument.

The frauds covered a period from February 1982 to April in 1993. In jailing the brothers, his Honour Judge Bing commented: "I consider that these offences are serious and are a fraud on honest taxpayers. I have taken into account the period of time these offences cover and the great efforts by you to conceal them."

The tax and interest lost to the Inland Revenue as a result of these offences totalled over £500,000.

The Inland Revenue will also seek to recover the benefit that the brothers obtained from the fraud at a confiscation hearing scheduled for later in the year.

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#### **Double Taxation Conventions (DTCS) and Double Contribution Conventions (DCCS)**

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An update on the annual review of the above will appear in Issue 60 (August).

A full list of the UK's double taxation conventions is given below

a) Comprehensive double taxation conventions as at 1 April 2002

Country	Year/Statutory instrument number	Country	Year/Statutory instrument number
Antigua and Barbuda	1947 No.2865	Luxembourg	1968 No.1100
Argentina	1997 No.1777	Macedonia (2)	1981 No.1815
Australia	1968 No.305	Malawi	1956 No.619
Austria	1970 No.1947	Malaysia	1997 No.2987
Azerbaijan	1995 No.762	Malta	1995 No.763
Bangladesh	1980 No.708	Mauritius	1981 No.1121
Barbados	1970 No.952	Mexico	1994 No.3212
Belarus (1)(3)	1986 No.224	Mongolia	1996 No.2598
Belgium	1987 No.2053	Montserrat	1947 No.2869
Belize	1947 No.2866	Morocco	1991 No.2881
Bolivia	1995 No.2707	Myanmar (Burma)	1952 No.751
Botswana	1978 No.183	Namibia	1962 No.2352
Brunei	1950 No.1977	Netherlands	1980 No.1961
Bulgaria	1987 No.2054	New Zealand	1984 No.365
Canada	1980 No.709	Nigeria	1987 No.2057
China	1984 No.1826	Norway	2000 No.3247
Croatia (2)	1981 No.1815	Oman	1998 No.2568
Cyprus	1975 No.425	Pakistan	1987 No.2058
Czech Republic	1991 No.2876	Papua New Guinea	1991 No.2882
Denmark	1980 No.1960	Philippines	1978 No.184
Egypt	1980 No.1091	Poland	1978 No.282
Estonia	1994 No.3207	Portugal	1969 No.599
Falkland Islands	1997 No.2985	Romania	1977 No.57
Fiji	1976 No.1342	Russian Federation	1994 No.3213
Finland	1970 No.153	St Kitts and Nevis	1947 No.2872
France	1968 No.1869	Sierra Leone	1947 No.2873
Gambia	1980 No.1963	Singapore	1997 No.2988
Germany	1967 No.25	Slovak Republic (Slovakia)	1991 No.2876
Ghana	1993 No.1800	Slovenia (2)	1981 No.1815
Greece	1954 No.142	Solomon Islands	1950 No.748
Grenada	1949 No.361	South Africa	1969 No.864
Guernsey	1952 No.1215	Spain	1976 No.1919
Guyana	1992 No.3207	Sri Lanka	1980 No.713
Hungary	1978 No.1056	Sudan	1977 No.1719
Iceland	1991 No.2879	Swaziland	1969 No.380
India	1993 No.1801	Sweden	1984 No.366
Indonesia	1994 No.769	Switzerland	1978 No.1408
Ireland (Republic of)	1976 No.2151	Thailand	1981 No.1546
Isle of Man	1955 No.1205	Trinidad and Tobago	1983 No.1903
Israel	1963 No.616	Tunisia	1984 No.133
Italy	1990 No.2590	Turkey	1988 No.932
Ivory Coast (Côte d'Ivoire)	1987 No.169	Tuvalu	1950 No.750
Jamaica	1973 No.1329	Uganda	1993 No.1802
Japan	1970 No.1948	Ukraine	1993 No.1803
Jersey	1952 No.1216	United States of America	1980 No.568
Jordan	2001 No.3924	Uzbekistan	1994 No.770
Kazakhstan	1994 No.3211	Venezuela	1996 No.2599
Kenya	1977 No.1299	Vietnam	1994 No.3216
Kiribati	1950 No.750	Yugoslavia (Federal Republic) (2)	1981 No.1815
Korea (Republic of)	1996 No.3168	Zambia	1972 No.1721
Kuwait	1999 No.2036	Zimbabwe	1982 No.1842
Latvia	1996 No.3167		
Lithuania	2001 No.3925		
Lesotho	1997 No.2986		

## NOTES

Many of the above conventions have been amended by Protocols, which are published separately with a new SI number. Any Protocol should be read in conjunction with the original convention.

(1) The UK's 1986 convention with the Soviet Union (SI 1986 No.224) is regarded as in force between the UK and Belarus pending the entry into force of the UK/Belarus convention.

(2) The UK's convention with Yugoslavia (SI 1981 No.1815) is to be regarded as in force between the UK and the former Yugoslav states marked. The position with regard to the remainder of what was Yugoslavia is undetermined.

(3) The 1995 convention with Belarus (SI 1995 No.2706) has not yet entered into force.

### b) Limited Agreements, covering taxes on income from international transport

Algeria	(Air Transport)
Belarus	(Air Transport) (1)
Brazil	(Shipping and Air Transport)
Cameroon	(Air Transport)
China	(Air Transport) (1)
Ethiopia	(Air Transport)
Hong Kong	(Air Transport)
Iran	(Air Transport)
Jordan	(Shipping and Air Transport)
Kuwait	(Air Transport)
Lebanon	(Shipping and Air Transport)
Saudi Arabia	(Air Transport)
Zaire	(Shipping and Air Transport)

## NOTES

Indicates Air Transport agreements which were not terminated by later Comprehensive agreements and remain in force alongside them.

## New Venture Capital Manual

A new Venture Capital Manual is to be published this summer. It will bring together all the published guidance on the Enterprise Investment Scheme, the Corporate Venturing Scheme and Venture Capital Trusts. Currently the material is spread over a number of Revenue manuals and Guidance Notes for managers of VCTs.

Having this material in one place will make it easier for users and potential users of the schemes and their agents to access the information they need.

We have also taken the opportunity provided by the new manual to produce some new introductory material giving an overview of the schemes, highlighting their common features and pointing out where they differ.

At the time of writing it is not possible to give an exact date for publication, but this will be announced on the Revenue internet site.

We welcome feedback on the new manual. Any comments should be sent to:

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Fax: 020 7438 7170



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The booking forms for these conferences are available from the CIOT. Telephone: **020 7235 9381**. You will also find them on the website at **www.tax.org.uk**.

Inland Revenue Statements of Practice and Extra-Statutory Concessions issued between 1 April 2002 and 31 May 2002.

### **Extra Statutory Concessions**

There have been no Extra Statutory Concessions for this period

### **Statements of Practice**

There have been no Statements of Practice for this period

*You can get copies of SPs and ESCs by telephoning 020 7438 4266.*

## CONTENT

The content of Tax Bulletin gives the views of our technical specialists on particular issues. The information published is reported because it may be of interest to tax practitioners. Publication will be six times a year, and include a cumulative index issued on an annual basis.

- You can expect that interpretations of the law contained in the Bulletin will normally be applied in relevant cases, but this is subject to a number of qualifications.
- Particular cases may turn on their own facts, or context, and because every possible situation cannot be covered, there may be circumstances in which the interpretation given here will not apply.
- There may also be circumstances in which the Board would find it necessary to argue for a different interpretation in appeal proceedings.
- The Bulletin does not replace formal Statements of Practice.
- The Board's view of the law may change in the future. Readers will be notified of any changes in future editions.

Nothing in this Bulletin affects a taxpayer's right of appeal on any point.

Letters on any article appearing in Tax Bulletin should be sent to the Editor, Aidan Close, Room G7, New Wing, Somerset House, Strand, London, WC2R 1LB or e-mail [Aidan.Close@ir.gsi.gov.uk](mailto:Aidan.Close@ir.gsi.gov.uk). We are sorry though that neither he nor our contributors will normally be able to enter into correspondence about Tax Bulletin or its contents.

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