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## Editorial

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### Revenue Practice Reviewed

A review of the "tax year" is never an easy task. However, an attempt has been made to isolate trends and developments, and extrapolate this into the new tax year.

Following the new approach of the courts to tax avoidance in *Ramsay* [1981] 1 All ER 865, the emerging principle has been coaxed out a little further by *Furniss v Dawson* [1984] 1 All ER 530. Whilst a large measure of uncertainty still surrounds the question of whether the Revenue will invoke *Ramsay* in individual cases, some objective guidance is to be found in *Young v Phillips* [1984] STC 520. It is first necessary to identify the "relevant transaction", by looking at the end result of a composite transaction, and then to disregard for tax purposes the artificially inserted steps. The event which the Revenue identify as the relevant transaction must contain all elements which give rise to the tax charge. This does not narrow the scope of Lord Brightman's judgment in *Furniss v Dawson*, but it does appear to exclude the broad "substance over form" approach to avoidance which practitioners feared could result. The uncertainties surrounding this area of the law continue, and practitioners must continue to advise with the "subject to *Ramsay*" rider attached should the Revenue take the point.

This leads to the second issue, the status of Statements of Practice

published by the Revenue. Does stamp duty fall within the *Ramsay* doctrine? Views have been expressed on the subject which go both ways. The Revenue have said they think that the "pref trick" (a method of effecting share sales without paying stamp duty) is within the scope of *Ramsay*. A Statement of Practice was published which explained that the *Ramsay* point would not be taken in certain cases in which the pref trick is used, because the conditions upon which the reorganisation exemption is conferred under statute for stamp duty are too narrowly drawn. The details of the concession were vague, for example, is there to be any territorial limitation on the scope of the exemption? No mention of avoidance in relation to the pref trick was made in the consultative document on stamp duty reform (published after *Ramsay*) so there does appear to be a change in attitude in the Revenue.

If, as in the stamp duty case, the taxpayer decides he does not wish to concede to the view in a Statement it is open for him to do so. The difference between the two sides is the Revenue's open cheque book for litigation.

Revenue discretion does appear to be assuming ever increasing significance. It is perhaps time to consider a "rulings" procedure, as adopted in the US, whereby advance assurance can be obtained that the Revenue will not "exercise their discretion against the taxpayer, in respect of individual transactions".