

FLIP-FLOP SCHEMES AND *BURTON*¹

by Imran Afzal

Burton involved a Mark 1 Flip-Flop Scheme, implemented before the anti-avoidance provisions in Schedule 4B-4C, TCGA 1992 took effect. The issue was whether gains arising to non-resident trustees could be attributed to Mr Burton under ss.86-87 TCGA 1992, without reference to the new anti-avoidance measures. Broadly, s.86 TCGA 1992 attributes the gains of non-resident trustees to UK settlors if the latter have an interest in the trust, and s.87 TCGA 1992 attributes gains to UK beneficiaries if they receive capital payments from the trust.

Although Flip-Flop schemes have now been blocked by the afore-mentioned legislation, the decision of the First-Tier Tribunal (Tax Chamber) remains important in two key ways. First, it is of direct relevance to any schemes carried out before the anti-avoidance provisions took effect. Secondly, it has wider significance in relation to the meaning of “benefit” and “capital payment” for the purposes of s.87 TCGA 1992.

The legislative provisions referred to below are those applicable to the 1999-2000 tax year.

Facts

The key steps in the scheme were as follows:

1. On 29 November 1994 Mr Burton, a UK resident and domiciliary, settled £10 on a