"BENEFIT": A NOTE

by Milton Grundy

Whether a non-domiciled individual who receives outside the United Kingdom a benefit in the form of a transfer of money or of a chattel and later remits that money or chattel to the United Kingdom is chargeable to tax under ss.731 et seq of the Income Tax Act 2007 (s.740 of ICTA 1988) has caused some controversy. Michael Flesch QC, in an article in this *Review*[1] says he is not. "Just as", he says, "one cannot step into the same river twice, so too one cannot receive the same benefit more than once". James Kessler QC, in his *Taxation of Foreign Domiciliaries*[2] disagrees. He suggests that the "benefit" is not the *transfer*; it is the *asset* transferred. And that can be received a second time

I have arrived at Michael Flesch's conclusion down a slightly different path. I may loosely say that a free lunch is a benefit. But it is not the lunch which is a benefit; it is its free availability to me. In general terms, a benefit is not a thing – a sum or a chattel; it is a relationship between a thing and a person. The establishment of this relationship requires the consent of that person: you cannot confer a benefit on me without my consent. When I say that I "received" a benefit, I mean that I consented to the establishment of this relationship. The reason I cannot "receive" that benefit a second time is that I cannot consent to something to which I have already consented.

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[1] *GITC Review Vol.1 No.2 page 16.*
[2] 3rd Edition, Key Haven Publications Plc, paragraph 13.28.1.