THE SHAHS

by Milton Grundy

Just for a moment, Dr. Moritz Hellmann thought he could still hear the bark of the seals in the Regents Park Zoo. In his mind, he was back in his old office, the window open and a breeze coming from the East. In reality, he was turning into the entrance of the Baur au Lac. He had prepared a memorandum headed *Mr. & Mrs. Shah*, and – no – he had not exactly forgotten to bring the memo with him: he had left it in London because the transaction had only three simple steps, which he could easily remember. And besides, he would need both arms to greet his Indian clients in the proper manner. Dr. Hellmann had been here before – the pretty garden of the hotel to the left, the imposing entrance on his right. But this time he was to see the brother and sister-in-law of the clients he met here (could it really be?) nearly two years ago.[1]

Like his brother, Mr. Shah was going to spend £10 million or thereabouts, buying a house in London, and he and his wife planned to spend most of the year there. They knew they would become tax resident, but they would have no difficulty in retaining their domicile in Gujarat, where they had many family and business ties; they had grasped the general principles of the remittance basis, and they were happy with all that. But they were getting on in years, and they wanted to be able to leave their house to their children without incurring a charge to UK inheritance tax. In the past, Dr. Hellmann had advised clients to put a UK home in an offshore company under an offshore trust, but he had come to doubt whether there was any wholly satisfactory way of dealing with a capital gain on a disposal of the house or of preventing the client being treated as a "shadow" director of the company. Besides, the clients didn't like it. They liked to see the title in their own name and the deeds in their own bank box. When they came to apply for a new credit card, they wanted to answer the question, "Are you a homeowner?" with a simple "Yes", and not with some explanation about being the licensee of some offshore trust. Mr. Shah, Dr. Hellmann was sure, would like to be the holder of the title to his London home.

The transaction would call for an offshore unit trust with assets of around £10 million. Dr. Hellmann had a friendly bank, just a stone's throw down the Bahnhofstrasse, which had earmarked for him an offshore unit trust in the Bahamas. The unit trust had sold its investment portfolio, and the proceeds were held on deposit at the bank. That seemed very satisfactory. As he stepped into the lobby, he quickly rehearsed the steps he would need to take.

1. Mr. Shah (with a nominee) to buy the units.

2. The trust to lend the cash to Mr. Shah. Dr. Hellmann thought that the loan agreement should make provision for interest, to be debited annually, but not payable until Mr. Shah is again non-resident.

3. Mr. Shah to buy the house and charge it to the trust as security for the loan.

The money Mr. Shah borrows, Dr. Hellmann thought, does not come from him or from "any person who was at any time entitled to, or amongst whose resources there was at any time included, any property" derived from him. Accordingly, Mr. Shah's debt would rank as a deduction against the value of his home for inheritance tax.[2] The house would be Mr. Shah's principal private residence.[3]

Dr. Hellmann was now ready to begin his meeting with the clients. And there they were in the lobby. Dr. Hellmann greeted them. "Namaste," he began.

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[1] I recounted this story in my *Six Fiscal Fables* (ITPA 2010).
[2] FA 1986 s.103(1).
[3] TCGA 1992 s.222(1) – (4).