BOOK REVIEW: IMPLIED TRUSTS AND BENEFICIAL OWNERSHIP IN MODERN UK TAX LAW

Paul Michael Gilmour[1]

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The concept of beneficial ownership is a highly contentious issue in U.K. tax law. The beneficial owner is the natural person who ultimately owns or controls ownership of assets and determines who is entitled to the benefits of an asset. In determining ownership of property rights or assets, scholars, tax professionals, and the U.K.'s tax courts, legislators, and executive (His Majesty's Revenue & Customs [HMRC]) have paid close attention to the complex social, economic, and legal contexts relevant to beneficial ownership (González-Barreda, 2020). Recent public exposés about the political elite and wealthy concealing their beneficial ownership in order to avoid or evade tax obligations have driven public consciousness towards the enhanced transparency of corporate and tax systems (Christians, 2017; Gilmour, 2020). As such, beneficial ownership remains a topical and important point for discussion.

Beneficial ownership in the context of trusts can be particularly contentious in circumstances in which the issues of ownership are not explicitly determined. A trust is an arrangement where a "settlor" divides the ownership of an asset between a "trustee", who commands legal title over the asset and, thus, controls it, and a "beneficiary", who stands to benefit from the asset. A trustee can also be a beneficiary of the trust (HMRC, 2017). A person known as a "protector" can also be appointed to a trust arrangement, allowing them to administer the trust or decide the nature of trust assets. In many cases, they have the authority to appoint and remove trustees, and to make decisions concerning the distribution or investment of assets (van der Does de Willebois et al., 2011).

Central to the imposition of beneficial ownership through trust arrangements is the principle of equity, which seeks to overcome injustice caused by the strict application of common law rules or unreasonable conduct by any of the parties involved. This is certainly true for implied trust arrangements. Here, trustees effectively hold the legal title to the trust property, yet this is not necessarily where the beneficiary interests lie (de Waal, 2000). Indeed, equity acknowledges the beneficiaries' fair entitlement to the property subject of implied trust arrangements. Implied trusts are unique in this respect because, unlike express trusts, there is no written word that explicitly details the circumstances of an arrangement or where the beneficial interests should lie. Therefore, the courts must presume and impose the parties' intentions to create a trust and determine the implied trust arrangement according to rules of fairness and equity.

This book examines the importance of beneficial ownership in U.K. tax law with a focus on the imposition of beneficial ownership via implied trusts. In doing so, it considers how U.K. tax law and the executive, HMRC, determine beneficial ownership via implied trusts for tax purposes. The author recognises the dearth of literature on this subject and offers a comprehensive and much needed contribution. The author is a Fellow of the Chartered Institute

[1] School of Criminology and Criminal Justice, Faculty of Humanities and Social Sciences, University of Portsmouth, United Kingdom. E-mail: paul.gilmour@port.ac.uk.

of Taxation, a full member of the Society of Trust & Estate Practitioners, is well qualified to contribute to the field, and offers important insights from a legal practitioner's perspective. There is little doubt that this book would appeal to interested academics, law students, and professionals specialising in taxation, trusts, and related topics.

Chapter one explores beneficial ownership in the context of trust arrangements. It effectively introduces the idea that a lack of clarity around beneficial ownership presents a dilemma with regard to how trust law should settle issues of beneficial ownership. It is crucial to ensure beneficial ownership transparency, not only in order to safeguard the fair and equitable division of assets, but also to prevent tax evasion, money laundering, and other illicit activities. For Niyetullayev and Almond (2014), obscurity in beneficial ownership undermines the integrity of political, legal, and financial systems, creates public distrust, and disrupts social order. A lack of beneficial ownership transparency also helps to conceal corrupt wealth by hampering the capability of law enforcement and tax authorities to trace the real person behind corporate vehicles used to launder money and evade tax (Gilmour, 2020, 2022). In response to concerns surrounding beneficial ownership transparency, the United Kingdom has mandated for the disclosure of beneficial owners of corporate entities through: (1) the persons of significant control (PSC) registers concerning U.K. companies; (2) the Trusts Registration Service for trust arrangements and, most recently; (3) the Register of Overseas Entities, which concerns those owning or controlling foreign entities that own property in the United Kingdom.

However, the beneficial owner of assets is not necessarily their registered or legal owner and identifying the real beneficial owner can prove problematic. This is an important distinction because companies are "legal entities" in their own right, yet can also hold income and other assets (Hook, 2020). For equitable tax purposes, it is the person with the right to benefit from the property and income who should be the one liable for taxation (Hook, 2020). As Jain et al. (2013) note, a company does not substantially own anything: it acts merely as a vehicle for the activities and assets of those responsible for the company. Although this book focusses on the importance of beneficial ownership in U.K. tax law without much concern for broader problems related to illicit corporate activities, chapter one helps to establish the key foundations of beneficial ownership and considers how the law should respond in terms of determining beneficial ownership for tax reasons.

Such discussion sets the scene for chapter two, which explains the key differences between resulting and constructive trusts. Historical references to key case law examples—including *Dyer v Dyer* (1788) 2 Cox Eq Cas 92, *Cook v Fountain* (1676) 3 Swans 585, and *Ireby v Gibone* (1579) Cary 82 21 ER 44—allow the reader to appreciate how past applications of beneficial ownership determine modern, real-world issues of trust law. Resulting trusts are considered with sufficient depth to further differentiate between "automatic" resulting trusts and "presumed" resulting trusts. Notably, where automatic resulting trusts arise in situations in which the disposal of assets from settlor to trustee has merely failed for some reason, presumed resulting trusts depend on the intention of the transferor following voluntary transfer of property or advancement of monies (Mee, 2014). In both cases, the resulting trust functions to return the beneficial interest of property to its original owner. The chapter then discusses constructive trusts, which are imposed by law and ignore the issue of intention. It also underscores the importance of the fiduciary relationship between parties of a trust arrangement (Smith, 1999).

Chapter three references the doctrine of the “distribution of powers” in Charles de Secondat, Baron de Montesquieu’s seminal *Spirit of Laws* (1748), which advocated for independent function of legislative, judicial, and executive branches of government through three distinct bodies (see Benwell & Gay, 2011; Waldron, 2013). This is a short but well-organised chapter, which examines how modern tax law has evolved, been construed, and been enforced through the tax tribunals (the judiciary), parliamentary legislation, and the executive.

Chapter four explains how implied trusts and express trusts are regarded differently for tax purposes within U.K. trust law, despite these trusts dividing the legal and beneficial ownership of assets in a similar way. The chapter clarifies that trustees of an express trust are liable (as legal owners) for all income, capital gains, and inheritance tax. In contrast, for implied trusts, tax liability falls on whoever is considered to own the beneficial rights of an asset: this is similar to the way in which bare trusts are taxed. In these situations, HMRC interprets the outright owner of assets to be the beneficiary for taxation purposes (as discussed on pages 19 to 20 of the book). The chapter finishes by covering how partnerships (including ordinary, limited, and limited liability partnerships) are treated in U.K. law and argues that a partnership is effectively a trust for tax purposes.

Chapter five briefly examines beneficial ownership in income tax legislation. It highlights how beneficial ownership is recognised in income tax legislation and reveals that it is the courts that will mainly impose beneficial ownership in trusts, rather than income tax law. This chapter provides an effective lead into a discussion of settlements legislation as a central aspect of income tax legislation with regard to implied trusts.

Chapter six explores settlement legislation and its relationship with implied trusts and income tax law. This chapter includes a substantial discussion about settlements legislation and tackles several important aspects relevant to the imposition of beneficial ownership via implied trusts. This includes an examination of situations in which a settlor or their child beneficiary retains an interest in settlor-interested trusts. It investigates partnerships, divided waivers, and alphabet shares, with useful reference to case law. The chapter then discusses settlement issues in respect of cases in which income is diverted between spouses (this includes civil partners). The author covers the aggregation of spousal income for income tax purposes, and an in-depth debate about spousal exemption and related case law follows.

Chapter seven provides discourse on the origins of equity and beneficial ownership within U.K. courts and the associated impact on taxation. It discusses how equity has been treated previously within the U.K. courts in order to underline equity as a key corrective principle. The chapter discusses the powers of the Lord Chancellor, before delving into the role played by the Court of Exchequer (as an early common-law court and later authority in equity matters) and the modern High Court. This chapter presents the early foundations of equity and beneficial ownership in the U.K. courts through an interesting historical perspective.

Chapter eight advances on the previous chapter’s discourse by examining how equity and beneficial ownership are represented in current U.K. laws. First, it considers how beneficial ownership is reflected in income tax laws through a discussion of executive, legislative, and judicial approaches to beneficial ownership. It provides a useful insight into how HMRC recognises equity principles in income tax and equity features in the tax compliance process. Second, it addresses similar issues related to how beneficial ownership is reflected through the inheritance tax and capital gains tax regimes. Finally, the author examines the cases of *John*

Clark v HMRC [2015] UKFTT 324 (TC) and *Rebecca Louise Vowles v HMRC* [2017] UKFTT 704 (TC), whereby the U.K. tax court has applied equity in order to remedy instances of inflexible and unjust law.

The final chapter concludes and consolidates the main arguments of the book. It reinforces the importance of equitable principles that have initially allowed beneficial ownership to be imposed through implied trusts within U.K. tax law. The reader is urged to reflect on beneficial ownership as a complex phenomenon—perhaps even, to some extent, a fallacy that would not exist had there had not been a need to ensure fairness and equity within U.K. law. Nonetheless, beneficial ownership is now established as an intrinsic function of U.K. tax law. Beneficial ownership underpins all taxation processes in the United Kingdom and spearheads how the modern U.K. law operates in order to determine the rightful owner of assets or other property. As the author effectively presents, beneficial ownership succeeds legal ownership for the purpose of taxation, and it is through the creation of implied trusts that this triumph for fairness is most evident.

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