TaxZone Newthwire

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Editorial Note

Commonsense and taxation have very little in common, and the former is no longer politically correct. Taxation is imposed by the government of the day to further its own political and economic needs. It is imposed first by statute law and then established case law. Secondary legislation in the form of Statutory Instruments then comes into play. Also at a lower level are Tribunal decisions in the form of published Special Commissioners' determinations.

That is not the end of the matter as we then have various other means by which the Inland Revenue sets out its views. These include Codes of Practice, The Revenue Manuals, Revenue Interpretations, Statements of Practice and Extra-Statutory Concessions. It must be remembered that none of these are law.

Do you get the picture? Tax is not an exact science, and there are plenty of grey areas. Even if the law and practice say one thing, occasionally the taxpayer and their adviser may receive a 'personal' concession that is quite unexpected.

In this wire I intend to highlight and review some important tax cases and Commissioners' decisions, with a short commentary applying to each one. New decisions are published regularly, and I am therefore limited to those published online in Simons Tax Cases up to 24 June 2004.

The cases I will highlight are those that appeal to me personally in my line of business and practice. Others may well have different priorities. They do not include any VAT cases, which could well merit a further wire written by someone else.

Regards

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Disclaimer

Recent cases

The following cases have been reported in Simon's since 1 January 2003:

- Mansworth v Jelley [2003] STC 53 This was an important decision regarding CGT and share options, which spawned a good deal of controversy and further legislation.

- R v Foggon [2003] STC 461
  This was a criminal prosecution case, where the taxpayer pleaded guilty to cheating the public revenue, and received a two-year prison sentence. The interesting part was that the judge made a confiscation order for just over 1m pounds. The taxpayer appealed on the basis that he should only pay over the tax lost of about 450,000 pounds, but the court held that he should part with the amount from which he had benefited.

- CIR v George and another (Exors of Stedman deceased) [2003] STC 468 [2004] STC 147
  The late taxpayer owned a share in a caravan park run commercially. As well as site rents, the business also derived income from other sources such as caravan sales, and the sales of other items on the site. The Special Commissioners had determined that IHT Business Property Relief was due, but the High Court reversed this decision. Happily for the taxpayer, the Court of Appeal restored the findings of the Commissioners.

- Synaptek Ltd v Young [2003] STC 543
  This is the first and only IR35 case yet to reach the High Court. Unfortunately the taxpayer's appeal was rejected. The taxpayer had appeared personally before the General Commissioners, and the High Court was bound by their findings of fact. The taxpayer's engagement had also commenced before the 2000 Budget, and the contract did not contain the necessary clauses of self-employment.

- CIR v Eversden and another [2003] STC 822
  A deceased taxpayer had gifted 95% of his home into trust, but retained 5%. In an IHT gifts with reservation case, the court found in favour of the arrangement. This particular loophole has now been closed by subsequent legislation.

- R (on the application of Wilkinson) v CIR [2003] STC 1113
  A taxpayer claimed the equivalent of widower's bereavement allowance on the basis of human rights legislation. His appeal was dismissed.

- R v Gill and another [2003] STC 1229
  This case centred on whether evidence obtained at a previous 'Hansard' interview was admissible in a subsequent trial concerning cheating the public revenue. The court admitted the evidence, but the decision resulted in a major change to the Hansard procedure, which now incorporates a formal caution and tape recording of the initial meeting.

- Slattery v Moore Stephens [2003] STC 1379
  This was a professional negligence case against a firm of accountants, who were accused of giving unsatisfactory advice to a former client who was resident but not ordinarily resident in the UK. The claim succeeded, but the taxpayer was deemed to be 50% responsible for the tax lost in one of the years under review.

- Langham v Veltema [2004] STC 54
  A property was transferred to a director, based on an agreed valuation of 100,000 pounds. This amount was included on the P11D and the self-assessment enquiry window expired on 31 January 2000. Subsequently the value was established to be 145,000 pounds. The court held that the Revenue were entitled to make a discovery under section 29, TMA 1970.

- Venables v Hornby [2004] STC 84
  The taxpayer was an executive director and chairman of his own company. He retired early on the grounds of ill health, but continued as a non-executive director. In a case which reached the House of Lords the court held that the retirement benefits paid to him on early retirement were not taxable.

- Wilson v Clayton [2004]
  A compromise agreement was agreed by an Employment Tribunal where a taxpayer was dismissed and then re-engaged on less favourable terms. The financial result of this was that the employee received 5,060 pounds. The court held that this amount was within the tax-free exemption limit of 30,000 pounds.

- Christensen v Vasili [2004]
  A director of a company had a 5% financial interest in a car, the other 95% being owned by his company. The court held that this was sufficient to exempt him from a car benefit charge.

Recent Special Commissioners' decisions

- Lime-IT Ltd v Justin SpC 342
  This was an IR35 appeal by the taxpayer, Lisa Fernley, that succeeded after a long battle with the Revenue, which is recorded on the company's website. Miss Fernley had other clients, purchased a number of computers for the particular contract and continues to operate in a businesslike manner. A claim for compensation against the Inland Revenue was also involved.

- Tilbury Consulting Ltd v Gittins SpC 379 and SpC 390
  Tilbury Consulting was another IR35 case. The first appeal concerned a witness summons, which required a director of the client company to give evidence, following the Revenue's failure to effect this in Lime-IT. In the event a valid substitution clause, lack of control and the fact that the taxpayer was not 'part and parcel of the organisation' clinched the case in favour of the taxpayer.

- Osborne v Dickins SpC 393
  A taxpayer had effected a capital gain, but had only submitted a repayment form R40 to the Inland Revenue. The Commissioner held that the form R40 was not a return for the purposes of the Taxes Acts.

- Alcock v King SpC 396
  For the purposes of establishing whether an employee was 'higher paid' one had to aggregate salary, car benefit, fuel benefit and credit card payments to purchase fuel, even though this was illogical and resulted in a double charge for the fuel.

- Usetech Ltd v Young SpC 404
  This time the Revenue succeeded in an IR35 case. The taxpayer was a software specialist in connection with oil rigs and oil wells. He had some flexibility of working hours, but there was control by the client company's manager. Although the contract had a substitution clause, it was held to be illusory. However there was no sick pay or holiday pay entitlement. This was a disappointing decision for the taxpaying community.

- Future Online Ltd v Faulds SpC 406
  The Revenue succeeded again in another IR35 appeal. There were similarities to the Synaptek case, as the taxpayer worked on a contract at the DWP. He was a systems leader in charge of a team, and was held to be 'part and parcel of the organisation'. There was also control by the test manager, and no substitution was ever sought. The 'mutual obligations' were well above the irreducible minimum.

- Lord Hanson v Mansworth SpC 410
  The former executive chairman of Hanson plc benefited from special security arrangements arranged by the company in order to meet a perceived threat from the IRA. The Revenue assessed Lord Hanson to a benefit for the years 1989/90 to 1997/98, but the appeal that equivalent deductions could be claimed under section 50, Finance Act 1989 succeeded. However the taxpayer should have disclosed the benefit and deductions in his return.

Well-known cases

We now turn to other cases, which are legion. I propose to refer to those that I have selected under headings relating to the particular tax issue addressed.

Tax Avoidance

With the recent announcement in the 2004 Budget that tax avoidance schemes must undergo Inland Revenue approval, it is worth reviewing case law on this subject.

- Duke of Westminster v CIR 19 TC 490
  This case contained the immortal words of Lord Tomlin 'every man is entitled if he can order his affairs so that the tax attaching under the appropriative Acts is less than it otherwise would be'.

- Ayrshire Pullman Motor Services & Ritchie v CIR 14 TC 754
  Here again Lord Clyde's judgment contained the well-know dictum 'no man in this country is under the smallest obligation, moral or other, so as to arrange his legal relations to his business or to his property as to enable the Inland Revenue to put the largest possible shovel into his stores'.

Both of these cases were decided about 70 years ago, and current public and government opinion is somewhat opposed to the views of these two judges. Consequently more modern judgments have adopted a more hawkish stance. A selection of these are:

W T Ramsay Ltd v CIR [1981] STC 174
Furniss v Dawson [1984] STC 153
CIR v Plummer [1979] STC 793
CIR v McGuckian [1997] STC 908
Ingram v CIR [1985] STC 835
CIR v Willoughby and another [1997] STC 995
Ensign Tankers (Leasing) Ltd v Stokes [1992] STC 226
CIR v Burmah Oil Co Ltd [1982] STC 30

Dual Purpose Expenditure

- Mallalieu v Drummond [1983] STC 665 In a case beloved by the Revenue a practising lady barrister attempted to claim for clothing worn only in court. The claim failed on the grounds that the clothing was capable of being worn on other occasions.

The Business Base

- Horton v Young 47 TC 60
  A self-employed bricklayer travelled from his home to various sites in connection with his work. He regarded his home as his business base and kept his books there. The court held that motor and travelling expenses between home and the various sites were claimable for tax purposes.

- Jackman v Powell [2004] STC 645
  In a case with unusual facts a self-employed franchise milkman kept his milk float at home, as he was forbidden to keep it at his depot. He claimed the home to depot expenditure undertaken each morning before he commenced his round. This was accepted by the Special Commissioner (see SpC 338), but the decision was overturned in the High Court.

Benefits in Kind

- Pepper v Hart & Others [1992] STC 898
  Schoolmasters at a public school were able to arrange education of their own children at the school at a concessionary reduced rate. The Inland Revenue sought to impose benefits in kind assessments on the various taxpayers. The House of Lords was referred to the Hansard Statement that preceded the legislation, and the court agreed that any assessment should be based only on the marginal cost to the employer. This case has very important principles applicable to similar and comparable situations.

Private Use Adjustments

- Sharkey v Wernher 36 TC 275
  The court held that horses withdrawn from a stud farm should be valued at market value and not cost. This case has had far- reaching consequences for many years. The owner of a general stores who uses some sweets, for instance, must credit them in his turnover at market value and not cost. The rationale of this case has been questioned recently in the professional press, with the view that this decision is increasingly out of date.

Business Economics

- Mr & Mrs Scott t/a Farthings Steakhouse SpC 91
  In an investigation case, the inspector of taxes refused to accept the veracity of the taxpayers' records and made substantial additional assessments based on a business economics exercise. A lawyer versed in criminal procedure represented Mr & Mrs Scott before the Special Commissioner, and the Revenue's case was demolished, with costs awarded to the taxpayers, and the likelihood that a subsequent compensation claim would be successful.

Tips and Troncs

- Figael Ltd v Fox [1992] STC 83
  Regulation 49 determinations were made in a case where the directors of a company operated a 'tronc' system. The court confirmed the determinations, and this case underlines the principle that an effective tronc arrangement must be operated by someone other than the directors or management.

Business Travel and Subsistence

- Caillebotte v Quinn [1995] STC 265
  A subcontractor claimed for the excess cost of eating lunch away from home, but this claim was rejected by the court. Mr Justice Templeman (as he then was) held that 'a Schedule D taxpayer, like any other taxpayer, must eat in order to live, he does not eat in order to work'. Additionally, as the claim was for the excess of cost only, it could not be incurred exclusively for the trade. One feels that this decision owes much to the judge who made it. Also, on the face of it, it puts the self-employed taxpayer in a worse position than an employee.

- Elderkin v Hindmarsh [1988] STC 267
  This case concerned an employee who was employed by a firm of consulting engineers. The taxpayer spent long periods away from home, and was paid an appropriate living allowance by his employer. His claim that the expenses of living away from home were incurred wholly, exclusively and necessarily in connection with his employment was rejected by the court.

- Pook v Owen 45 TC 571
  In a case decided on its own facts a doctor had his own practice assessed under Schedule D, but also held a Schedule E hospital appointment. He received a mileage allowance from the hospital which covered part of his journeys to and from the hospital. The House of Lords held that his hospital work commenced when he received a telephone call, and that his travel expenses were fully deductible, the hospital payment being a reimbursement of expenses.

Appeals

- Edwards v Bairstow & Harrison 36 TC 207
  In this case Lord Radcliffe held that the 'Court can allow an appeal from the Commissioners' determination only if it is shown to be erroneous in point of law'. However the Court should intervene where 'the facts found are such that no person acting judicially and properly instructed as to the relevant law could have come to the determination under appeal' and where 'the true and only reasonable conclusion contradicts the determination'. In the same case Viscount Symonds held that the courts should only overturn a Commissioners' finding of fact 'if it appears that the Commissioners have acted without any evidence or upon a view of the facts which could not reasonably be entertained'.

- Associated Provincial Picture Houses v Wednesbury Corporation 2 All ER 680
  In a back duty case the Inland Revenue issued additional assessments, which were appealed. The Commissioners determined all the assessments in reduced amounts. The Court of Appeal held that the Commissioners' finding of fact could only be reversed if it was unreasonable, which was not the case here. The trader was not entitled to introduce additional evidence in the High Court since he had failed to submit that evidence to the Commissioners.

Accounting Principles

- Threlfall v Jones, Gallagher v Jones [1993] STC 537
  The taxpayers carried on a business of hiring out boats. They leased boats under a 24-month lease, and paid a substantial initial lease payment. The Revenue submitted that the lease payments should be spread over the 24-month period, and the court agreed.

- Herbert Smith (a firm) v Honour [1999] STC 173
  A firm of solicitors which was vacating office premises claimed a substantial provision for future rents, which were payable on vacation. The court held that these were claimable under normal accountancy principles.

Furnished lettings

- Griffiths v Jackson [1983] STC 184
  Two chartered accountants let a number of properties to students. They attempted to contend that the profits should be assessed as trading under Schedule D, Case 1. The court disagreed, confirming that profits from the exercise of property rights were assessable under Schedule D, Case VI. Note that this may not apply to furnished holiday lettings.

Home Expenses

- Gazelle v Servini SpC 48
  An accountant worked at home part of the time, and also entertained clients there. Two bedrooms out of three were used for business purposes. A claim for 50% of the home running costs of 16,000 pounds was denied, and the Special Commissioner considered that the 20% allowance of 3,200 pounds granted by the Revenue was 'not unreasonable'.

Wife's salary

- Moschi v Kelly 33 TC 442
  The Inland Revenue, Commissioners and the court disallowed a claim for wife's wages. Lord Justice Somervell observed that the sums 'were merely book entries, and the amounts had not been paid to her but had been credited to the appellant's drawing account.'

Directors salaries

- Copeman v William Flood & Sons Ltd 24 TC 53
  A family pig-dealing company paid what were then substantial salaries to children of the controlling director. The Inland Revenue only agreed to allow a small proportion of the sums for tax purposes, and the court agreed. Mr Justice Lawrence observed that 'it may very well be that there are sums paid to the directors as remuneration for their services in accordance with the articles of association and in accordance with a resolution of the company, but it does not necessarily follow in the least that they are sums which are wholly and exclusively laid out for the purposes of the trade'.

CGT Lettings Relief

- Owen v Elliott [1990] STC 469
  A couple carried on a guest house business from the property in which they also resided. The had lived in different parts of the property from time to time. As well as an agreed one-third exemption of the capital gain when the property was sold, the couple claimed lettings relief under section 223(4), TCGA 1992, which the Court of Appeal granted.

Normal expenditure

- Bennett & Others v CIR [1995] STC 54
  A widow paid fairly substantial and regular payments to her three sons, all out of income. The taxpayer was 87 and had a settled lifestyle. The court held that the payments were normal expenditure out of income, and therefore exempt from IHT.

Self Assessment

Reasonable excuse

- Creedplan Ltd v Winter SpC 54
  A company's form CT200 was received late by the inspector, and a 100 pound penalty was imposed. The accounts were also submitted separately. The company contended that the CT200 had been posted earlier, but the Special Commissioner did not accept this excuse, particularly as the return and accounts were not submitted simultaneously.

- Akarimsons Ltd v Chapman SpC 116
  A convoluted sequence of correspondence and a form CT200 ended with the Revenue imposing a 200 pound penalty on the company. An appeal for reasonable excuse on the basis of ill health of the principal director and company secretary succeeded.

- Steeden v Carver SpC 212
  A hairdresser's 1996/97 self-assessment tax return was delivered by hand on the morning of 2 February 1998. The claim for reasonable excuse for late filing was accepted, and this case has resulted in a change of Revenue practice.

Surcharge on late payment

- Thompson v Minzly [2002] STC 450
  A taxpayer paid their tax 29 days after the due date, and the Revenue imposed a surcharge. The court held that the effect of the legislation was that a surcharge could be imposed if the tax remained unpaid at the beginning of the 29th day after due date. The appeal therefore failed.

Validity of Enquiry Notice

- Wing Hung Lai v Bale SpC 203
  A taxpayer received an enquiry notice under section 9A, TMA 1970 for the year 1996/97 on 2 February 1999, his accountant having received a copy one day earlier. The appeal that the notice was received late was accepted by the Commissioner. The date of receipt of the notice had expired at midnight on 30 January 1999. The Revenue accepted this decision and opened the way for other taxpayers to appeal their 1996/97 enquiry notices received late.

- Holly & Laurel v H M Inspector of Taxes SpC 225 Similar facts and conclusions were reached in another case concerning a 1996/97 return and intended enquiry.

Power to call for documents

- Self-Assessed v H M Inspector of Taxes SpC 207
  The taxpayer received a notice under section 19A requiring him to produce to the Revenue books and information within 30 days. The taxpayer appealed, contending that he should have had 30 days from the receipt of the notice, and this contention was accepted by the Commissioner. The Revenue have now altered their procedures to ensure that taxpayers are given the required period.

- Accountant v H M Inspector of Taxes SpC 258
  An accountant was subject to an enquiry personally, and was required to produce personal bank statements, and also those relating to undesignated client accounts. He was also required to produce a balance sheet. His appeal against having to produce information regarding undesignated client accounts and a balance sheet was rejected by the Commissioner.

- Guyer v Walton SpC 274
  A similar decision was reached in respect of a solicitor, who was required to produce his client accounts during a section 9A enquiry. Section 19A, TMA 1970 did not incorporate legal professional privilege, and the disclosure of the documents would not contravene human rights legislation.

Ask a question

Readers with a current case should post their query in Any Answers.

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