Some unusual tax cases

Not all tax cases are appealing against penalties or arguing whether an avoidance scheme works. Among the hundreds of cases heard every year are some interesting novelties. Here are a few.

Reading the Act

For two years there was a tax provision (now repealed) that a company that made a profit of up to £10,000 paid corporation tax at 0%.

If it had associated companies, this limit was split between them. So if it had three associated companies, there were four companies and they could each had a 0% tax limit of £2,500.

This simple provision became Income and Corporation Taxes Act 1988 s13AA(4)(b)(i) which stated that "the first relevant amount is £10,000 divided by one plus the number of associated companies".

This seems clear, but in the case *SpC 412 Hallamshire Estates Ltd v Walford [2004],* a taxpayer suggested that these words could be interpreted differently. It had one associated company.

It said that "£10,000 divided by one" is £10,000, and "plus the number of associated companies" means plus 1. So their allowance was £10,001 and not £5,000.

They lost.

An unusual relocation case

In 1988, the High Court heard the case *Williams v Todd. Ch D [1988] 60 TC 727.*

Mr Robin Todd worked in Wigan until 1984 when he was relocated by his employer to London. The employer

As house prices near London were much higher, his employer gave him an advance on salary of £8,440. It was repayable on demand, though in fact it was repaid in monthly instalments over ten years. This was in accordance with the staff handbook which assumed there were no tax implications.

Mr Todd certainly did not believe that the loan created any tax liability.

However Mr Williams, his tax inspector, decided that this advance was a beneficial loan and so was a taxable benefit in kind. It went to the General Commissioners where Todd won, so Williams appealed to the High Court.

All this sounds like a routine tax dispute. But who was Robin Todd's employer and what did he do? He was, er, a tax inspector for Inland Revenue. In effect Inland Revenue was suing itself.

At least it could be sure of winning, which it did. The advance *was* a taxable benefit in kind.

The Lodi case

Perhaps predictably the Americans can beat this. In 1985 a man called Oresti Lodi sued himself. There was a trust of which he was both the trustee and beneficiary. He believed he would gain greater tax advantages if he were the reversioner.

In an action worthy of Protagoras, he brought an action as Lodi the beneficiary against Lodi the trustee for negligence. The action required him to defend proceedings which he did not do, so he filed for default judgment against himself. The judge refused, so he appealed, and lost again.

The judge in California ruled that "the one at issue here is a slam-dunk frivolous complaint". For those not familiar with Californian fiscal terminology, this means the case lacked merit.

But I am a stonemason

Mr Benjamin John Lloyd maintained that he was not liable to pay income tax as he was a stonemason.

This unusual defence was heard before Judge Goff in the High Court on 6 July 1970, and can be found in volume 46 of the official record of tax cases.

Here is a quotation from the judge on page 541:
"I asked him [Mr Lloyd] to formulate his case, which finally he did as follows. Of all official things of State of Great Britain the master mason who has supreme knowledge of carving them is the supreme authority, but it is a strange language 5,000 years old used in all countries, and any man with a knowledge of reading and writing cannot comprehend it. The master mason is not liable to tax because it restricts his carving, which inspires all people to keep the laws of citizenship."

The judge concluded that all this was irrelevant. He had to enforce tax law as he found it. He could find nothing to say that stonemasons were exempt from tax.

The case was dismissed with costs which Lloyd asked to be kept as low as possible so that he could continue his 20-year old research.

I managed to trace Mr Lloyd in 2010 and asked him if he paid the tax and if he has completed his research. The answer to both questions is yes, though he declined to share his research with me.

Lloyd v Taylor. Ch D. [1970] 46 TC 539

Paid in sovereigns

The gold sovereign is still legal tender for £1. Although you can legally pay a debt of £1 with a gold sovereign, you would be daft to do so as they are worth much more.

However this triggered an idea in the mind of Mr Chandler. He was a director of St James Plates Ltd, which made plates for the printing industry and is still in business.

He employed Philip Jenkins at a wage of between £29.50 and £65.02 a week in 1976/77. They agreed that they would reduce his wage to between £1 and £4 a week but pay him in gold sovereigns. Because his wages were so much lower, they fell below the tax threshold, so no tax was paid. Jenkins then sold the sovereigns and got an amount that equalled his normal wages.

It was argued that the sale of the sovereigns was not taxable as it was a capital gain and not income, and so qualified for another allowance for capital gains tax. Inland Revenue said that the tax was due on the real value of the sovereigns and not their legal tender value.

The High Court agreed. Under tax law, the profits of employment are taxable as wages. This included profits from selling gold coins in which the wages have been paid.

So the case was dismissed with costs. Mr Jenkins had to pay a statutory fee to the court. He gave them a sovereign.

Jenkins v Horn. Ch D [1970] 52 TC 591.

Being too early

Most people are aware that HMRC can impose loads of penalties on a taxpayer for being even one day late with a tax return. Mr John Cameron, a farmer, was penalised for being too *early*. Instead of waiting until January and then panicking about meeting the 31 January deadline, Cameron sent in his tax return on 28 August 2006.

Cameron also established the Cameron Travel Scholarship Trust as a charity. This allows Scottish agricultural students to travel to Africa to study farming methods to broaden their experience to produce food more effectively in Scotland. Cameron established the trust with a donation of £936,000.

As a successful farmer, diligent taxpayer and generous philanthropist, one might expect the state authorities to be supportive. Not so.

A donation to a charity qualifies for tax relief under Gift Aid. This is made by a declaration on the tax return. In some circumstances, the tax relief may be offset against income of the previous tax year. On 28 January 2007, an amended tax return was submitted for tax relief in the previous year.

This was rejected by HMRC because a claim for Gift Aid "throw back" could only be made on an *original* tax return. Had Cameron not made his return in August but waited until January, he could have had his tax relief. As the judge said, Cameron was in effect penalised for being too prompt in submitting his tax return.

John Cameron. [2010] TC 415.

Treating a dove like a hawk

In 1869, the Dove family established a family firm of builder's merchants. The company is now run by Herbert Dove from the third generation of family owners.

The family wished the benefits of the company to be held for its employees. So in 1954 they created a pension trust and transferred all their shares into the trust.

In 1991, Robert Maxwell was found dead after using huge amounts of his employees' pension funds to "invest" in his business. As a result the Pensions Act 1995 was passed. From 6 April 1997, this made it unlawful for a pension fund to invest more than 5% of its funds in the sponsoring employer.

There is a huge different between Robert Maxwell and Herbert Dove (roughly the same difference as between black and white). However the Dove pension fund fell foul of this new law.

To deal with this, the pension fund trustees sold the shares to an employee benefit trust (EBT), created on 29 January 1997. In 1997 the company paid £3 million to the EBT.

EBTs have been widely used as a means of avoiding PAYE and national insurance. In this case, the judged was satisfied that "the reason for the establishment of the EBT was to perpetuate the vision of Herbert Dove of the Appellant company prospering through being held independently for the benefit of its employees".

Evidence of the pride and goodwill was given to the tribunal by employees. Of the 140 employees, 40 had been with the business for more than 25 years.

However visions, principles and loyalty have no status in the UK tax system. To counter the abuse of EBTs, relief for corporation tax is disallowed. Rules are rules. The company could not claim tax relief on the £3 million paid to the EBT.

For the second time, the company was penalised by rigid tax rules designed to counter the exact opposite to the behaviour shown by this company.

J T Dove Ltd. [2010] TC 893

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