Statute Law Society

The journey to fiscal enlightenment

Lord Carnwath, Justice of The Supreme Court

10 July 2019

The title comes from a judgment I gave earlier this year.[1] I was talking about the format of the statutes which emerged from the Tax Law Rewrite project. A key feature of the inclusion of statutory "signposts" which as I put it are there "to give clear pointers to each stage of the taxpayer's journey to fiscal enlightenment". I will come back to the Rewrite Project later in this speech. But it occurred to me that the phrase might have some relevance to my own career in the tax world, from Revenue junior in the early 1980s to more recent experience as a judge at different levels of the hierarchy. Forgive me if in this lecture, rather than a structured discussion, I indulge in something of a journey down memory-lane, on my own rather halting progress to something like fiscal semi-enlightenment.

I came to tax law relatively late. I did not study it at University or for my bar exams. My early practice was in very different fields, mainly planning, housing and property law. It was something of a surprise therefore when, in 1979, I was invited to put my name forward for appointment as Revenue Junior on the Common Law side. In those days the Revenue Junior represented the Revenue in most of the cases relating to income and capital gains tax in the Chancery Division, usually on appeal from the General or Special Commissioners. Given the high marginal rates of income tax at the time, there was a steady flow of cases. There used to be a Revenue List, under which a judge was allocated to hear nothing but tax cases for up to four weeks. During that period the Revenue Junior was fully occupied, but at other times it was possible to maintain my practice in other areas of the law.

[1] *R(Derry) v HMRC* [2019] UKSC 19

My misgivings about applying were somewhat allayed when I learnt from the then current incumbent, Brian Davenport, that the tradition was to appoint someone who knew nothing at all about tax. On that basis I considered myself well-qualified for the job, and presumably so did the Attorney-General Michael Havers who was kind enough to appoint me. The logic apparently was that such a person would come to the job with no prejudices or pre-conceptions about the tax laws in question, and would thus be better able to act as the innocent mouthpiece for the Revenue.

As I also quickly discovered, this might sometimes result in innocence being thrown into the lion's den. I vividly remember my first encounter with Walton J, who not only knew quite a lot about tax, but was not known for mincing his words. His judgment in *Donnelly v Williamson*[2], was a classic demonstration of both qualities. I was the unfortunate recipient.

In terms of the statute it was about the meaning of that elusive word "emoluments" in the context of schedule E. The taxpayer was a teacher who used to travel by car to attend certain out of school functions, and was paid by the authority a small mileage allowance. Was that taxable as an emolument from the employment? The General Commissions had said no. But apparently the Revenue thought it a point of sufficient general importance to justify an appeal. So apparently did the NUT who instructed leading counsel to represent the taxpayer. Unfortunately, the actual amounts involved for the two years in question were not substantial. The judge was unimpressed. The opening words of his judgment are etched in my memory:

> "Believe it or not, this appeal by the Crown is in respect of tax at the basic rate on a sum of £13… This is not merely a case of taking a sledge hammer to crack a nut; it effectively ensures that the nut itself, and a good deal more will wholly disappear in the operation…. The… justification (offered) is that this is a test

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[2] [1982] STC 88

> case; I presume that if that is so it is fairly representative of the whole class of cases… Thus the wholly uncomfortable feeling is left with the public at large that the Crown spends so much time and effort persecuting minnows that it is small wonder that it has no energy left to pursue the real sharks…"

It will not surprise you to hear that the Revenue lost the case and did not appeal.

For the purpose of this lecture the case can also be used to illustrate a more general point about tax law. Much of it has a very long history – in some cases dating back 100 years and more. It has a propensity for ordinary English words – like "emoluments" in that case – to develop a life of their own by the process of judicial interpretation over years – sometimes decades. Of course, tax law is all statutory. It is the embodiment of the legislative will. In theory, the task of the court should be to find out what Parliament meant by faithful interpretation of words it used. But as that case illustrates Parliament's use of language may not always be crystal clear. The true meaning of some of the concepts may be shrouded in the mists of time.

Another example which I struggled with in my early days as Revenue Junior was the concept of "plant and machinery" in the context of capital allowances. Again, I have a vivid memory of my first encounter with that esoteric branch of the law. It was on a Friday in early June 1981, when I was told that my leader in a case in the Court of Appeal on the following Monday was ill, and that I would have to do the case on my own. The case was *Cole Brothers Ltd v Phillips* [1981] STC 671. The question in short was whether the entire electrical installation in the John Lewis store in Brent Cross could be classified as plant so as to qualify for capital allowances.

I found myself having to spend most of a nice summer weekend getting up to speed on a subject of which I knew nothing. That involved reading into a long succession of authorities, dating back to the leading case of *Yarmouth v France* (1887) L.R. 19 QBD 647. That, you will recall, was not a tax case but was under the Employers Liability Act 1880.

It was held (somewhat improbably) that a cart-owner's horse was "plant", and its vicious nature a "defect" in the plant, such as to make him liable under the Act to his employee whose leg was broken by a kick from the horse. Although no doubt justifiable as a purposive interpretation in its context, it turned out to be a bad start for the clarity of the concept when introduced into tax law. I found not much more assistance in the most recent modern authority, *Benson v Yard Arm Club* Ltd [1981] STC 266, where a floating restaurant was held not to qualify as plant, because it was said to be the setting in which the business took place.

I struggled to find any common theme in all these cases, let alone relate it to the task in hand. I was relieved in due course not only that we won the case, but to see my misgivings about the interpretative process echoed in the concurring judgment of Stephenson LJ:

> "What is plant?... Parliament has not attempted to put an end, or a limit, to (the) litigation by defining plant. Many judges have made the attempt. The more definitions multiply, the less enviable grows the task of Her Majesty's Inspectors of Taxes. If they 'traverse the whole gamut of reported cases' crossing the border into Scotland and the seas to Australia in their search for guidance, they find plant in the most unlikely objects, from a horse to a swimming pool, from a dry dock to a mural decoration...
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> The philosopher-statesman, Balfour, is reported to have said it was unnecessary to define a Great Power because, like an elephant, you recognised it when you met it. Unhappily plant in taxing and other statutes is no elephant (though I suppose an elephant might be plant). It has lost what resemblance to machinery it may once have had and any contrast with buildings or structures is now misleading, however strong the temptation to go back to those simple similarities and differences which the word might have suggested before repeated difficulties of application drove judges to gloss them over…"

Quite.

Much more recently in the Supreme Court, I was reminded again of the extraordinary staying power of some tax concepts. This was a case about the meaning of the expression "yearly interest" in the context of the winding up of Lehman Brothers International[3]. Famously Lehman Brothers had become commercially insolvent due to the worldwide crash of the international group of companies of which it formed an important part. To some surprise the winding-up generated an unprecedented surplus after payment of all provable debts, in the region of £7 billion, of which some £5 billion was estimated to be payable by way of statutory interest under the winding-up rules. Was this "yearly interest" so as to require tax to be deducted on payment by the liquidators?

As Lord Briggs said in his judgment the appeal concerned "the relationship between two statutory provisions, one very old and the other very young":

> "The old provision, which dates back to the inception of Income Tax during the Napoleonic Wars,.. requires a debtor in specific circumstances to deduct income tax from payments of 'yearly interest' arising in the United Kingdom. The young provision, first made the subject of legislation in 1986…, requires a surplus remaining after payment of debts proved in a distributing administration first to be applied in paying interest on those debts in respect of the periods during which they had been outstanding since the commencement of the administration…."

The leading case was the attractively named *Bebb v Bunny* (1854) 1 K & J 216, which turned on whether interest for late completion of a contract for the purchase of land was

[3] *Revenue and Customs v Joint Administrators of Lehman Brothers International (Europe)* [2019] UKSC 12 (13 March 2019)

"yearly interest" of money within the meaning of section 40 of the Income Tax Act 1853. In deciding that it was yearly interest, Sir William Page Wood V-C said helpfully (pp 219-220):

> "I must hold that any interest which may be or become payable de anno in annum, though accruing de die in diem, is within the 40th section."

I will not follow Lord Briggs' fascinating review of the cases over the following century, culminating with characteristically perceptive interventions by Lord Denning MR[4] and Sir Robert Megarry VC[5] in more recent times. It is perhaps an extreme example of a statutory concept which was barely understood when it was introduced proving sufficiently resilient to provide the basis for the disposition of £5bn in an international winding-up 150 years later.

Those cases were all concerned with statutory concepts which had been around a very long time, elucidated or sometimes obscured by the wisdom of generations of judges. Quite different were the issues raised by my other regular battle ground – Capital Gains Tax. That was a relatively new creation dating from the Finance Act. The basic idea was simple in principle – a disposal of an asset leading to a chargeable gain or an allowable loss. As Lord Wilberforce explained in Aberdeen [6]:

> "… a guiding principle must underlie any interpretation of the Act, namely, that its purpose is to tax capital gains and to make allowance for

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[4] Jefford v Gee [1970] 2 QB 130

[5] Chevron Petroleum (UK) Ltd v BP Petroleum Development Ltd [1981] STC 689

[6] Aberdeen Construction Group Ltd. v Commissioners of Inland Revenue [1978] AC 885

capital losses, each of which ought to be arrived at upon normal business principles… To paraphrase a famous cliche, the capital gains tax is a tax upon gains: it is not a tax upon arithmetical differences."

However, the tax avoidance industry soon found ways to run rings (literally) round those simple concepts, leading to counter measures by the courts. It was in the context of capital gains tax that in March 1981 the House of Lords decided that tax avoidance had its limits, at least in relation to schemes which were entirely circular and self-cancelling: *W T Ramsay Ltd v IRC.*[7] That was an extreme example of its type, memorably described by Templeman LJ in the Court of Appeal ([1979] 3 All ER 213 , 214), as—

> "Yet another circular game in which the taxpayer and a few hired performers act out a play; nothing happens save that the Houdini taxpayer appears to escape from the manacles of tax."

Here again I had a steep learning curve. I was not in that case, but I was in the two following cases: *Burmah Oil*,[8] and *Furniss v Dawson*[9]. *Burmah Oil* was a Scottish case and I had the advantage of being led by the then Lord Advocate, Lord Mackay of Clashfern. So, I had a relatively easy ride. Although like *Ramsay* it was a circular scheme, I recall that our main concern was whether the House would be willing to extend the new principle from a back street, off-the-peg scheme, as in that case, to a bespoke Saville-row version, carefully crafted be the most respectable professional advisers. We need have had no worries. It was obvious from the start that the panel, led by Lord Diplock and Lord Scarman, were enthusiastic converts. The Lord Advocate was able to sit down within half an hour of opening the appeal.

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[7] [1982] AC 300.

[8] *IRC v Burmah Oil Co Ltd* 1982 SC (HL) 114; [1982] STC 30; 54 TC 200

[9] [1984] AC 474

It was in *Furniss v Dawson*, in the High Court[10] that I first had to get to grips with the *Ramsay* principle as an advocate. That seemed a much more difficult case because the scheme was not circular and self-cancelling, but "linear", There was a real disposal, in that the asset ended up in different hands; the artificiality lay in the route by which it got there. The Special Commissioners had held that the scheme worked, but that was before the decision in *Ramsay*. The Revenue appealed to the High Court. That was where I came in. We lost before Vinelott J and the Court of Appeal but. with Peter Millett QC as leader, the Revenue eventually succeeded before the House of Lords.

For me that case was the beginning of something of a love/hate relationship with *Ramsay* which has followed my career through to the Court of Appeal and the Supreme Court. My heart was with judges like Templeman and Diplock who saw no problem in developing the law to stamp out an obvious abuse; my head was never far from those who struggled to find an intellectually defensible basis for doing so, within the legitimate boundaries of the judicial process of statutory interpretation.

It was apparent from what followed that I was not alone. As I was to observe in a case in the Court of Appeal in 2003 (*Barclays Mercantile Ltd v Mawson* [2003] STC 66[11]):

> "It is striking that some 20 years after *Ramsay*, and even with the assistance of at least five major House of Lords decisions explaining or reinterpreting *Ramsay*, there should be such a wide divergence of views as to the nature of the principle…."

(I shall return to that important case.)
In *Furness v Dawson* in 1984[12] Lord Brightman attempted a statement of principle intended apparently to be final and authoritative:

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[10] *Furniss v Dawson* [1982] STC 267

[11] In the House of Lords [2005] 1AC 684

[12] [1984] AC 474, 527

> "First, there must be a series of pre-ordained transactions; or, if one likes, one single composite transaction…Secondly, there must be steps inserted which have no commercial (business) purpose apart from the avoidance of a liability to tax – not "no business effect". If those two ingredients exist, the inserted steps are to be disregarded for fiscal purposes. The court must then look at the end result. Precisely how the end result will be taxed will depend on the terms of the taxing statute sought to be applied."

Subsequent cases struggled to work out the conceptual basis of the principle - was it a conventional application of purposive statutory construction (as, for example, Lord Steyn argued) or something more, and if so what, and how far did it go? To me at least it seemed clear that it could not be explained by reference simply to statutory interpretation. It had to be something more, because it involved not just interpreting the statute in a purposive way, but reinterpreting the facts. One had to pretend that the intervening steps, though admittedly effective in "business" terms, had not happened.

I came back to it again as a judge in the Chancery Division in 1997 a case called *McNiven*.[13] The scheme involved payment of interest, funded by an equal but tax-exempt payment in the opposite direction. At first instance I thought it was an obviously caught by the Ramsay principle. The House of Lords disagreed[14]. Lord Hoffmann recognised the difficulties of explaining the principle as one simply of statutory interpretation, and was troubled by the constitutional objections to the court moving outside its proper realm. He came up with a new explanation. The answer lay if the difference between "commercial" and "legal" concepts, one touchstone apparently being whether a commercial man would say of a statutory expression "You had better ask a lawyer" (see [2001] 2 WLR at p. 395 para. 58) In *Ramsay* and *Furness* the court had done no more than decide that such concepts as loss and gain and disposal in the Finance Act 1965 were commercial concepts. It was proper therefore to ignore elements which had no commercial purpose. The term "payment" by contrast was a term with a clear and

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[13] [1997] STC 1103

[14] *MacNiven v Westmoreland Investments Ltd* [2003] 1 AC 311

unambiguous meaning in legal terms. A payment in one direction was no less a payment because it was funded by an equal payment in the opposite direction.

That commercial/legal dichotomy, though ingenious, did not find general favour. It was not supported by either of the very experienced counsel before us in the *Barclays Mercantile* case. The context was not capital gains, but capital allowances. By then I was in the Court of Appeal, sitting with Peter Gibson LJ who like me had been involved in cases as counsel for the Revenue. As I said he said in my judgment:

> "69.Like Peter Gibson LJ, and with similar respect to its source, I find some difficulty in understanding this dichotomy. It was a difficulty shared by both leading counsel before us. Lord Hoffmann clearly regarded *McGuckian* and *Furniss*, as illustrations of "commercial" concepts, in the sense he used the term, and as therefore susceptible to *Ramsay* analysis. However, in each case, there seems a strong case for regarding the statutory concept as one of law, or certainly one on which a commercial man would look to a lawyer for advice."

We were however agreed that in this particular case the taxpayer the statutory scheme gave no room for the application of the Ramsay principle, and the taxpayer should succeed.

The House of Lords took a similar view. Unusually their decision was given in a unanimous "report" (delivered by Lord Nicholls) rather than individual speeches, and not surprisingly its reasoning has an element of compromise. It has rightly been treated since then as a definitive statement of the principle and its limits. Although Lord Hoffmann was a party to the decision, it skirted delicately round his commercial/legal divide. That was described as "a not unreasonable generalisation", but "not intended to provide a substitute for a close analysis of what the statute means" (para 38).

Similarly, while paying lip-service to the theory that it was an exercise in statutory interpretation, the report qualified that by adopting the pithy reformulation by Ribeiro PJ in the Hong Kong Final Court of Appeal[15]:

> "[T]he driving principle in the *Ramsay* line of cases continues to involve a general rule of statutory construction and an unblinkered approach to the analysis of the facts. The ultimate question is whether the relevant statutory provisions, construed purposively, were intended to apply to the transaction, viewed realistically."

That explanation was also quoted by Lord Reed with my agreement in my next encounter with the principle, by this time in the Supreme Court in 2016 in UBS v HMRC[16]. He also cited with approval what I had said in *Barclays Mercantile* of the conceptual basis of the principle:

> "… it can perhaps be justified as statutory interpretation in the broader sense. It recognises the underlying characteristic of all taxing statutes, as parasitic in nature. They draw their life-blood from real world transactions with real world economic effects, to which the Revenue is not a party. To allow tax treatment to be governed by transactions which have no real world purpose of any kind is inconsistent with that fundamental characteristic." (paras 65-6)

By then there had been a new statutory intervention in Part V of the Finance Act 2013. This introduced the new "General Anti-Abuse Rule" designed in terms to counteract tax arrangements deemed to be "abusive". Tax arrangements are defined by reference to whether "having regard to all the circumstances, it would be reasonable to conclude that the obtaining of a tax advantage is the main purpose, or one of the main purposes, of the arrangements". "Abusive" is defined by reference to whether the arrangements are "a reasonable course of action in relation to the relevant tax provisions", having regard to

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[15] Collector of Stamp Revenue v Arrowtown Assets Ltd [2003] HKCFA 46, para 35

[16] [2016] 1 WLR 1005

all the circumstances including (inter alia) whether it uses "one or more contrived or abnormal steps", and "whether the arrangements are intended to exploit any shortcomings in those provisions". To sweeten the pill the Act established a "GAAR Advisory Panel" of independent experts appointed by the Commissioners to give guidance on the application of the principles in particular cases. On an appeal, the Tax Tribunal is obliged to take account of their guidance.

The GAAR has been subject to some robust criticism, notably by Daniel Greenberg, former Parliamentary Counsel in a previous paper to this society (Dangerous Trends in Modern Legislation [2015] PL 96). He complains that under the GAAR "inaccuracy in drafting becomes, bewilderingly, the transferred fault of the citizen."

"The legislation adds up to the proposition that if the drafter and the Executive get a particular piece of legislation 'wrong', in the sense that they fail to achieve what they might have wished to achieve, they can absolve themselves of any responsibility and transfer responsibility to the citizen and penalise him or her for not working out what it was intended to achieve…"[17]

In response one might argue that it is perhaps more constitutionally appropriate and certainly more efficient for the legislature to address directly the problems of artificial tax avoidance, than for it to be done indirectly by the (arguably) slow, expensive and convoluted process of judicial development that took place in the 20 years between

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[17] Malcolm Gammie referred me to section 259M Taxation (International and other provisions) Act (TIOPA) 2010 dealing with countering of relevant tax avoidance arrangements. : arrangements are not "relevant avoidance arrangements" if the obtaining of the relevant tax advantage can reasonably be regarded as consistent with the principles on which the legislation, national or foreign is based for which purpose regard may be had, where appropriate, to "the Final Report on Neutralising the Effects of Hybrid Mismatch Arrangements published by the OECD in October 2015" or any replacement or supplementary publication.(458 pages long).

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Ramsay and *Barclays Mercantile*. It is perhaps more open to question whether the GAAR was needed at all. In a recent lecture my colleague Lord Hodge quoted figures in Accountancy Age showing that 2015/6 the revenue had won 23 out of 26 cases without having to rely on GAAR. In any event, one way or another, I suspect that fiscal enlightenment in that area of tax law has probably gone as far as it can.

Finally, I come back where I started with the Tax Law Rewrite project. The project itself dates from the md-1990s. I am grateful for the historical account given by David Salter in an article in the British Tax Review, [18] and some more recent observations to me by John Whiting, former director of the Office of Tax Simplification. It began with a backbench amendment to the Finance Act 1995, which became section 160. It required the Revenue to prepare a report on "tax simplification"; including "full details of recent annual additions to both primary and secondary legislation", "a summary of recent criticism of both the complexity of tax legislation and of parliamentary procedure"; and "the advantages and disadvantages of possible solutions". The Revenue reports which followed had predictably positive titles "The path to tax simplification" "the Tax Law rewrite – the way forward". Emphasis was put on the need for a high degree of user involvement, and the need for a discrete and tailor-made Parliamentary process with dedicated Joint Committee of both House.

The general approach was described by Stephen Timms MP, then Financial Secretary to the Treasury, in 2009:

> "The project now has a well-established approach to rewriting legislation, developed with the help of people whom it has consulted over a number of years. It restructures legislation to bring related provisions together and to provide more logical ordering. It also helps users by providing navigational aids, such as signposts, to make relevant parts of the legislation easier to find, and it has introductory provisions to set the scene. It unpacks dense source legislation by using shorter sentences and, where possible, it harmonises definitions. It uses

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[18] David Salter *The tax law rewrite in the United Kingdom* 2010 BTR 671

modern language and helps the reader with aids such as formulae, tables and method statements, when appropriate." [19]

It proved a massive and highly resource-intensive project. By 2009 when it was wound up by the then Labour Government, it had resulted in seven re-write Acts, covering income and corporation taxes and capital allowances, but not for example capital gains or inheritance taxes or the taxes management act. As appears from David Salter's 2010 article there were differing views as to how successful the project has been in terms of either simplification or of helping the ordinary taxpayer to understand the law. I made some attempt to canvas other views from tax professionals known to me, but found no real consensus. One important and, as it turned out somewhat restrictive, feature of the committee's remit was the rewrite should not alter the existing law subject only to "minor changes". According to the explanatory notes to the rewritten Income Taxes Act 2007 the "minor changes" were "In the main… intended to clarify existing provisions, make them consistent or bring the law into line with established practice." As David Salter observes, a critical issue, if the rewrite is not intended to change the law, is the extent to which the courts may have regard to the statutory predecessors of the legislation and the case law relating to it. He quotes John Avery Jones who in 1996 had anticipated the problem that the rewrite might make complexity worse by requiring the courts to look at both the old and the new legislation to find out if former decisions are still relevant.

A notable effect of the proliferation of "navigational aids" and "sign posts" was to make the statutes much longer. This became evident to us in *Derry.* As far as I am aware this is the first time the highest court has had to consider the correct approach to a Rewrite Statute.

The issue was the relevant year for a claim to for share loss relief. We attempted faithfully to follow the course mapped out by the Income Taxes Act, starting from the

[19] (Hansard, HC, col 3, Second Reading Committee, Corporation Tax Bill, 2008-2009 (January 15, 2009) (HC General Committee Debates, Session 2008-09) cited by David Salter op cit p 680.)

"Overview of the Act" in section 2, through the "7 steps" for the calculation of income tax liability under section 23, step 2 of which pointed us to the deduction of reliefs under section 24; and thence on to Part 4 ("loss reliefs") with its own "Overview", and finally at last to sections 131-2 (share loss relief), with (in case we had forgotten) their own signpost back again calculation of tax liability in step 2 of section 23.

That all seemed tolerably clear and (with time) easy enough to follow. However, the Revenue argued that we should not stop there. To find out the relevant tax year, they said, we needed to go to schedule 1B of the Taxes Management Act (headed "claims for loss relief involving two or more years"). They admitted that there was no specific signpost in that direction (as there was in respect of other forms of loss relief), but they took us to the very end of the ITA s 1020 which says "For further information about claims and elections see TMA 1970…"

In disagreement with the Court of Appeal, we did not think that was good enough. I said:

> "Having taken such care to walk the taxpayer through the process of giving effect to his entitlement as part of his tax liability for the year specified by him, it would seem extraordinary for that to be taken away, without any direct reference or signpost, by a provision in a relatively obscure Schedule of another statute concerned principally, not with liability, but with management of the tax. Section 1020 makes no specific reference to Schedule 1B, and in any event refers only to "information" in general terms, rather than anything likely to affect the substance of liability…"

The only countervailing consideration was that there was no obvious reason for - and nothing in the previous statutes to indicate - a difference in this respect between share loss relief, and other forms of relief which were in terms made subject to schedule 1B. But we thought that:

> "for the taxpayer's liability to be determined by reference to legal archaeology of this kind would negate the whole purpose of the tax law rewrite…"

I have not seen any academic commentary on that aspect of our judgment. I do not get the impression that it has disturbed the dovecotes particularly, but I would be very interested to hear other views on the success or otherwise of the project.

As an own experiment of my own for this lecture, I wondered what had happened to the concept which had caused me such discomfort back in 1981 in *Donnelly v Willamson*. As you will recall under ICTA 1970 income tax under schedule E was charged on the "the emoluments" from the employment, the expression "emoluments" being defined as including "all salaries, fees, wages, perquisites and profits whatsoever".

The 1970 Act dealt with the whole of Income and Corporation Taxes under 540 sections and 16 schedules. Under the rewrite there is now a separate Income Tax (Earnings and Pensions) Act 2003 running to 725 sections and 8 schedules (apart from the 1035 sections of the Income Taxes Act 2007). On any view a massive increase in volume, but with what benefits in clarity? The overview (s 1) tells us that "employment income" is dealt with in parts 2 to 7. Part 2 starts with section 3 which tells us about the "structure of the employment income parts", including part 3 which is going to tell us what are "earnings". On the way we pass by section 7 which tells us helpfully that "employment income" means "earnings within Chapter 1 of Part 3, any amount treated as earnings (see subsection (3) and any amount which counts as employment income (see subsection 6)". When eventually we get to Part 3 we find in section 62 a definition of earnings, which is in more familiar albeit more elaborate terms:

> "earnings", in relation to an employment, means—
> (a) any salary, wages or fee,
> (b) any gratuity or other profit or incidental benefit of any kind obtained by the employee if it is money or money's worth, or
> (c) anything else that constitutes an emolument of the employment."

So, in a sense we have come full circle – and back to our old friend emoluments. To decide what that means, it may be difficult to avoid going back to the previous case-law.

In conclusion, one may legitimately ask: has the rewrite made the concept simpler and easier for the ordinary taxpayer to understand? Or in the words of one well-seasoned observer has the clearer wording "simply meant that you understood better why you did not understand it?" I am afraid I am not qualified to answer those questions. However, for my own part, even with those navigational aids, I needed quite a lot of help finding my way round the new statute. I would have found it a tortuous and frustrating task if I had to rely only on the signposts in the Act. I was much helped by reference to some excellent modern textbooks, but also of course to aids which were not around when the project was conceived. A Google search for employment income takes one quickly to HMRC and other guidance on the issue, with hyperlink references to more detailed materials. In the light of that experience I suspect that the modern path to enlightenment may be not through rewritten statutes, however skilfully done. Even with those aids, and as I near the end of my judicial career, I am forced to admit that– in fiscal matters as in so many other aspects of life – true "enlightenment" (at least in the Buddhist sense) is still a long way off.

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