

All England Reporter/2015/April/*Lobler v Revenue and Customs Commissioners - [2015] All ER (D) 14 (Apr)

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***Lobler v Revenue and Customs Commissioners**

[2015] UKUT 152 (TCC)

Upper Tribunal (Tax and Chancery Chamber)

Mrs Justice Proudman DBE

26 March 2015

Income tax – Investment income – Insurance policies – Taxpayer investing life savings in Zurich Life insurance policies – Taxpayer making partial surrenders of insurance policies – Tax legislation deeming person making partial surrender of insurance policy as having realised taxable income – Revenue and Customs Commissioners amending taxpayer's self-assessments and assessing him to tax accordingly – Zurich Life discovering that size of taxpayer's liability being direct result of selecting wrong option on claim form – Revenue refusing to consent to recalculation – Whether remedy of rectification available to taxpayer – Income Tax (Trading and Other Income) Act 2005, s 507.

Mistake – Rectification – Unilateral mistake – Taxpayer investing life savings in Zurich Life insurance policies – Taxpayer making partial surrenders of insurance policies – Tax legislation deeming person making partial surrender of insurance policy as having realised taxable income – Revenue and Customs Commissioners amending taxpayer's self-assessments and assessing him to tax accordingly – Zurich Life discovering that size of taxpayer's liability being direct result of selecting wrong option on claim form – Revenue refusing to consent to recalculation – Whether remedy of rectification available to taxpayer – Income Tax (Trading and Other Income) Act 2005, s 507.

Abstract

Income tax – Investment income. The taxpayer had made withdrawals from life insurance policies with Zurich Life (Zurich) that he had invested in. Under the Income Tax (Trading and Other Income) Act 2005, each withdrawal had produced a deemed gain, with the result that he was liable to pay some US\$560,000 in tax to the Revenue and Customs Commissioners. That large tax liability was the direct result of the taxpayer selecting the wrong option on the claim form provided by Zurich. The Upper Tribunal (Tax and Chancery Chamber) allowed the taxpayer's appeal against an amendment of his tax returns by the Revenue on the ground of rectification alone.

Digest

The judgment is available at: [2015] UKUT 152 (TCC)

The taxpayer, a Dutch national, had moved to England. He had sold his home and invested the proceeds (as well as borrowings) in life insurance policies with Zurich Life (Zurich). He had subsequently made several withdrawals from the policies. Under s 507 of the Income Tax (Trading and Other Income) Act 2005 (the 2005 Act), each withdrawal had produced a deemed gain, with the result that the 2005 Act treated him as having realised taxable income of some US\$1.3m and was liable to pay some US\$560,000 in tax, although he had made no substantial profit or gain. That large tax liability was the direct result of the taxpayer selecting Option C on the claim form provided by Zurich rather than a different option under which the deemed chargeable gain and therefore the tax charge on the taxpayer would have

been significantly lower. The Revenue and Customs Commissioners (the Revenue) made an amendment to the taxpayer's tax return to reflect the tax liability incurred. On discovering the effect of the taxpayer's selection, Zurich offered to recalculate the Chargeable Event Certificates, 'based on what would be the more appropriate method of making withdrawals from the investment.' However, the offer was subject to the Revenue's consent. The Revenue maintained that the tax charge on the taxpayer had been rightfully incurred and rejected Zurich's offer to recalculate. The taxpayer appealed to the First-tier tribunal (Tax Chamber) (the FTT). The FTT found against the taxpayer with 'heavy hearts' as he was faced with an effective tax rate of 779%. The taxpayer appealed to the Upper Tribunal (Tax and Chancery Chamber)(the tribunal).

The taxpayer contended that he was entitled to the exercise of various remedies and that the FTT had erred in not applying them. There were three principal grounds of appeal: (i) private law grounds: (a) the doctrine of mistake at common law, (b) the doctrine of mistake in equity, (c) the remedy of rectification, and (d) human rights and private law; (ii) human rights' grounds in private law:(a) breach of the First Protocol to the European Convention on Human Rights, and (b) breach of art 14 of the Convention; and (iii) public law grounds: (a) the jurisdiction of the FTT, and (b) alleged ultra vires acts by the Revenue. Consideration was given to, amongst other authorities, *Futter v Revenue and Customs Comrs*; *Pitt v Revenue and Customs Comrs* [2013] STC 1148 (*Pitt v Holt*).

The tribunal ruled.

Pitt v Holt was authority for the proposition that a mistake as to the tax consequences of a transaction could be sufficiently serious to warrant rectification (see [68] of the decision).

The mistake was unilateral, it had been that of the taxpayer alone. Zurich had simply followed the taxpayer's instructions and so Zurich's intention had been irrelevant. Further, even if the taxpayer had been careless in not seeking advice when completing the withdrawal form, that carelessness had not deprived him of the remedy of rectification. However, the taxpayer's human rights under art 1 of the First Protocol to the Convention had not been breached. The relevant provision did not allow for arbitrary interferences as it was highly prescriptive. Furthermore, whether the Revenue had acted unlawfully in refusing to amend the taxpayer's return was a question for judicial review, not for an appeal (see [53], [61], [62], [73], [74], [90], [109], [141] of the decision).

The appeal would be allowed on the ground of rectification alone (see [142] of the decision).

Futter v Revenue and Customs Comrs; *Pitt v Revenue and Customs Comrs* [2013] STC 1148 applied; *Bell v Lever Bros Ltd* [1931] All ER Rep 1 considered; *Swainland Builders Ltd v Freehold Properties Ltd* [2002] All ER (D) 314 (Apr) considered; *Great Peace Shipping Ltd v Tsavliris Salvage (International) Ltd*, *The Great Peace* [2002] 2 All ER (Comm) 999 considered.

Michael Firth, instructed by Smith Pearman, Chartered Accountants, for the taxpayer.

Jonathan Davey (instructed by the Solicitor and General Counsel to the Revenue and Customs Commissioners) for the Revenue.

Neneh Munu Barrister.