



Photography: Anton Hammerl

WHAT GOVERNMENTS DO TO PEOPLE, AND HOW TO RESTRICT IT

International tax specialist Philip Baker QC traces the human rights thread running through his career for *Sarah Perrin*

A keen interest in human rights – whether for refugees or taxpayers – has always been an influence on Philip Baker.

Having studied law at university and completed two post-graduate degrees, the second an LLM in tax at London University, he had intended to specialise in tax at the bar but then ‘got a bit diverted’. He explains: ‘From 1979 to 1985 I was a full-time academic, teaching at the School of Oriental and African Studies (SOAS). I was working on, among other things, Chinese law.’ Although he completed a doctorate on international tax while working at SOAS, Chinese law increasingly became Baker’s primary interest – until he realised that further progress would require a move to Hong Kong or China. He then reversed his priorities, focusing primarily on tax law. This led to his completing his pupillage at Gray’s Inn, an unexpected offer of a tenancy, and a decisive career move down the path of international tax and the practice of law. He has been in practice from Gray’s Inn Tax Chambers since 1987, and took silk in 2002.

He remains involved in academia, however. For around 10 years he was visiting professor at Queen Mary, University of London, teaching international tax law. He is currently involved in the MA in taxation offered by the Institute of Advanced Legal Studies, also part of London University, and now entering its second year. ‘The new MA has taken off remarkably well, with the disadvantage that it’s taking up a lot of my time,’ he quips. He doesn’t really begrudge this commitment: ‘I feel there’s a responsibility for all professional persons to have some involvement in the training and education of the next generation.’ He adds: ‘And I rather enjoy teaching.’

A common thread

Although the focus of Baker’s legal work may have moved from Chinese law to tax matters, his interest in human rights provides a common thread. He explains: ‘Through my work on Chinese law I became involved with human rights work in China at what I regard as the sharp end of human rights – dealing with death penalty cases, with people who had been tortured, with asylum

seekers. That particularly came to a head after the Tiananmen Square massacre, when we were working with refugees and asylum seekers. There was then a time when I thought, is there a human rights connection to tax?’ Baker concluded that there was. ‘When you think more broadly about it, human rights law is about the restrictions on what governments can do to people who are subject to their power. In the tax area governments have tremendous powers, and they are perfectly capable of reducing people’s lives to absolute misery or making things work well and efficiently.’

This line of thought led Baker to investigate how many cases involving tax had come before the European Court of Human Rights. A search on the

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court’s database indicated that there were hundreds. ‘The database went berserk,’ he says. ‘I discovered there were a surprisingly large number of tax cases that had gone to Strasbourg, and very few people knew anything about them.’ Baker wrote up his findings around 10 years ago and has subsequently maintained his interest, still lecturing and writing on the topic.

He feels that human rights have not received sufficient governmental support, including in the tax arena. ‘I think the Tribunal is partly complicit in underplaying the significance of human rights,’ he says. ‘That is unfortunate because people’s lives can be made a misery by their dealings with the Revenue authorities. We have seen examples of that, and examples of people’s rights not being adequately respected. For example, I find it particularly frustrating that HMRC has sought orders against 308 financial institutions to disclose information about offshore bank accounts. There is an underlying assumption that anybody who has a bank account outside the UK must be a tax avoider, if not a tax evader.’

Baker is concerned by the apparent increase in the UK Revenue authority’s powers following the creation of the combined HMRC. He is a member of the

consultative committee set up to comment on those powers. This has ‘not been an entirely satisfactory experience, because we have not had control of our own agenda,’ he says. ‘We have been presented with papers for our comments. Sometimes our comments have been taken notice of, but not always. At times matters have proceeded so fast that we haven’t had an opportunity to properly consider them.’

One such issue was the whole question of information powers. ‘I suspect that none of us noticed that the rights to make representations in connection with information powers were being chopped away,’ Baker says. ‘The consequence is that you then have an application made in generic form for orders against 308

financial institutions to obtain large amounts of information.’ As Baker points out, this information will be held by the same Revenue authority that two years ago lost 25m people’s personal data, including that of his wife. ‘What safeguards have they put in place, what independent guarantees do we have, that this information about bank accounts is absolutely safe?’ he asks. ‘That’s a question of privacy, confidentiality and rights.’

Bad management

Another issue of concern is the way that UK tax policy is formed. ‘We have had very bad management of tax policy over the last couple of years in this country,’ he says. ‘We have had some real disasters, and that’s partly due to some tax policy being made in response to the Sunday newspapers. Ministers’ political advisers read something and their knee-jerk reaction is “you have to do something about this, Minister”. That’s a ridiculous way of dealing with a tax system. I think that much of tax policy should be taken out of the hands of politicians and be subject to some form of independent scrutiny.’

‘There are countries where, before legislation is presented to parliament, it is presented to a Council of State of senior constitutional lawyers, people

SUPPORT FOR THE TAXPAYERS' CHARTER

Philip Baker's human rights interest has led him to monitor closely and comment on the development of the UK Taxpayers' Charter, the idea of which he strongly supports.

'The idea of a charter,' he says, 'is to create a short, accessible document that anybody can look at – and you don't need to have a degree in law to understand – which tells you what are your rights and sometimes (as in the UK charter) what are your obligations with respect to the Revenue authority. I think that's rather a good idea. I believe – though this is yet to be proved – that it can help to improve the relationship between the Revenue authority, taxpayers and tax advisers. In other countries with a taxpayers' charter, the evidence suggests that it can be helpful.'

'I believe that relations in the UK between the Revenue authority and taxpayers and advisers have not been good over the last couple of years, so something that can improve that is a desirable end in itself.'

When he was interviewed in September, Baker was hopeful that the final version of the UK's Taxpayers' Charter would be a considerable improvement on its earlier draft incarnation, which he describes as 'an abysmal document'. He believes the government took criticisms on board with a view to producing something better. 'The question is to what extent they then internalise it and start to train their people to actually treat taxpayers' rights seriously,' he says.

with experience of administration, maybe ex-politicians and others, who have an opportunity to check the constitutionality and the wisdom of a measure. This doesn't necessarily stop the legislation going forward, but the Council of State can issue a public statement if it thinks a measure is unconstitutional or bad policy.' Such a process could, Baker believes, avoid embarrassments such as the UK government having to seek a legal opinion from US law firm Skadden, Arps, Slate, Meagher & Flom about whether the £30,000 non-domicile tax charge would be creditable for US citizens (an issue that is yet to be finally resolved).

Another example of ridiculous policymaking in response to perceived popular demand, in Baker's opinion, is the raising of the higher income tax rate from 40% initially to 45%, then to 50%. 'Nobody with any sense thinks that's going to raise a really significant amount in tax, but it will deter people from coming to the UK,' he says. 'It has a very big disincentive effect.'

Independent review of proposed policy changes could help to avoid damaging policy reversals. 'Massive U-turns on tax

policy, particularly on international matters in a very open market, will drive people away,' Baker says. 'More than anything else, businesses want stability in the tax system. They don't mind paying taxes provided they can predict them and provided there are good systems to avoid excessive double taxation.'

Desperate to collect tax

Double taxation issues are taking up considerable amounts of Baker's time. 'Because of the economic crisis, governments are more desperate to collect as much tax as they can, and they are particularly looking at non-residents as a source of tax,' he notes. 'Where there are cross-border transactions, each government is more likely to say it thinks its share is bigger than it thought it was previously. That's going to lead to clashes where perhaps taxpayers don't mind paying the tax, but they don't want to pay it twice in different countries.'

He is also seeing a lot of cross-border movement among both individuals and companies. 'There are a fair number of individuals who don't like the new UK non-domicile rules or the higher top tax rates and have decided to leave,' he says. 'I am also dealing with multinational corporates that are reorganising into or out of the UK – more commonly out of the UK these days.'

Baker enjoys the mix of personal and corporate tax in his caseload. 'It requires different skills,' he says. 'You need a bedside manner on the one hand [for personal clients], and corporate nous on

the other. But it's the same fundamental subject. You may be looking at a tax treaty in terms of how you deal with a dual resident individual, or whether a foreign company is going to have a permanent establishment in the UK. The whole area of tax treaties is a particular interest of mine.' Baker has in fact written a book on the subject.

His international tax focus means that his opinion is sometimes sought from around the world. 'Last year I went to Washington twice to give expert advice before the US Tax Court in connection with the creditability of a UK tax. I am currently doing some work with the US on cross-border tax issues. I also have an involvement with some interesting issues in India.' Baker is clearly thriving in his chosen area. 'You can see why I love international tax and why I get up in the mornings,' he says.

A past council member of the CIOT, Baker is still involved in various committees (education and international tax) and the EU and human rights sub-committee, as well as the Advanced Diploma in International Tax. He is especially proud of the CIOT's involvement in pro bono work, particularly through its sponsorship of the Low Incomes Tax Reform Group (LITRG). 'We succeeded in persuading the government to take a much preferential position on small pension taxation, for example,' he says. 'For over 20 years the government had been instructing pension companies to apply PAYE wrongly to small pensions. It woke up to this a couple of years ago. There was a suspicion the government was going to seek to reclaim unpaid tax from a couple of hundred thousand pensioners, people on small pensions for whom a deduction of an extra £5 a month would have made a difference. To be fair, the government itself seemed to be looking for a good argument for exonerating the pensioners, and we were able to give them one, as a result of which it decided not to seek to claim back the arrears of tax. That's a very good result and it was achieved by LITRG, by TaxHelp for Older People and by a bit of pro bono help.'

Philip Baker QC

1979	Called to the bar
1979	Lecturer in law at London University
1987	Joined Gray's Inn Tax Chambers
1997	Awarded an OBE for work with Chinese political refugees in the UK
2002	Became a QC

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