



FIELD COURT TAX CHAMBERS

Reliance on HMRC Manuals¹

It is difficult to see how the test for legitimate expectation set by the Court of Appeal could ever be met

It is a matter of profound importance that taxpayers and professional advisers are able to rely on the published statements of HMRC in connection with their own tax affairs and the affairs of their clients.

The very idea that we might not be able to trust the public statements of one of the most important and prestigious organs of government, must surely be unthinkable.

It is in this context that the recent decision of the Court of Appeal in *Aozora GMAC Investment Ltd v HMRC* [2019] EWCA Civ 1643 (reported in *Tax Journal*, 19 October 2019) assumes some importance.

The case was all about whether the company was entitled to double taxation relief which had been refused by HMRC on the authority of ICTA 1988 s 793A. The company said that HMRC's interpretation of s 793A was wrong – but crucially, even if HMRC was right, the relief should still be given because the HMRC Manuals said that relief would be available in these circumstances. The company had a legitimate expectation that HMRC would apply the law in accordance with their published guidance on which taxpayers were entitled to rely. That is what judicial review is for.

Not so fast, Monsieur. You need a bit more than this. It is necessary to consider (and weigh) a number of issues, for example, whether the taxpayer or the persons advising them relied on the published statements for this purpose; whether the explanation provided publicly by HMRC was clear, unambiguous and devoid of any relevant qualification; whether the taxpayer had suffered a substantial detriment from relying on it; and whether it would be conspicuously unfair for the relief to be denied. Tough call.

I do not want to dwell on the particular facts of this case, which were inevitably complicated, but to highlight one of the conclusions of the Court of Appeal which reads as follows:

“... it is necessary for [the taxpayer] to show a high degree of unfairness arising in its particular circumstances in order to override the public interest in HMRC collecting taxes in accordance with a correct interpretation of the law” (para 52).

In the current environment, it is difficult to see that such a test would ever be satisfied. It will always be possible to say that the public interest in collecting the right amount of tax according to the law must trump the interests of an individual taxpayer who has been disadvantaged.

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However, I would respectfully suggest that this must be the wrong way round. Surely fairness should always prevail. Were we not taught that this is the whole foundation of equity, and that since 1615, in the event of such a conflict, equity should prevail.

A suggestion that taxpayers can be misled and disadvantaged (and to bring us completely up to date, might commit suicide), by relying on official statements which the state can disown on the altar of the public interest, is not just the thin end of the wedge, it is the gates of the Kremlin.

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