

STRATEGIC TAX PLANNING PARTNERSHIP

International & UK Tax Consultants

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"FALSE DAWN FOR UK TAX SCHEMES"

Introduction

Many firms involved in marketing UK tax schemes were excited when the High Court judgment in the case of *Mayes –v- HMRC* was published several weeks ago.

This case was the first victory in the High Court for a marketed artificial tax avoidance scheme. The scheme in question was called "SHIPS 2". Basically the scheme tried to make use of a very special type of loss on an Offshore Life Bond. The Bond was acquired by a Jersey Resident, sold to a Luxembourg Company who then put large sums of money in the scheme and withdrew them all within the space of a month. The Bond was then sold to a UK Resident.

The objective was that the UK Resident would then surrender the Bond and claim Income Tax Relief on the artificial loss generated. There was also potential to use this Bond to generate a Capital Gains Tax loss.

Daniel Feingold, Senior Partner of Strategic Tax Planning Partnership commented:

"Mrs Justice Proudman's decision in this case is astonishing! Her judgment does not even mention the *Scottish Provident* case and seems to rely on older cases, rather than considering (as the House of Lords recommended), the *IRC Commissioners –v- Scottish Provident Institution* and *Barclays Mercantile Business Finance Limited –v- Mawson* cases together, as constituting the basis of the "purposive approach" to analysing tax schemes".

Ironically, the following day the Court of Appeal gave their judgment in another tax avoidance case, *Astall and Edwards –v- HMRC*. This involved a special type of debt instrument known as a "Deep Discounted Security" which was artificially bought and sold to realise a loss against Income Tax for UK tax payers. The same legal analysis of the "purposive approach" was made by the Lord Justices of Appeal and they considered more fully the *Scottish Provident Institution* case. Their clearer analysis demonstrates that when dealing with a scheme with artificial steps in it (such as the "SHIPS 2" scheme), the application of the "purposive approach" would lead to the conclusion that the scheme could not succeed.

Comments

Daniel Feingold, Senior Partner of Strategic Tax Planning Partnership said that "the correct conclusion in my view is that the *Mayes* decision represents a legal "blip". The approach adopted by the Court of Appeal in *Astall and Edwards* demonstrates that artificial tax schemes are not viable and will be struck out by the Courts. Sadly, it is highly possible that the judgment in *Mayes* will be used by tax scheme

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promoters to demonstrate their products still have some validity. They should be mindful of HMRC's Litigation and Settlements strategy that means this case will be taken all the way to the Supreme Court, if necessary.

Only success in the Supreme Court could alter the chances for these types of schemes. That still seems an unlikely prospect at present.

Anyone contemplating using a tax scheme should take independent tax advice as to the true state of the law and what acceptable tax planning options there are ".

Daniel Feingold
Senior Partner
Strategic Tax Planning Partnership