REMITTANCES: "ACTUAL SUMS RECEIVED"

Richard Bramwell QC[1]

We have it on recent authority that decisions of the Court of Appeal may be given *per incuriam*: see *Lewis v Rook* [1992] STC 171 at 177e. Readers should therefore not be dismayed to find that contributions to this Review are not immune from this affliction.

I was startled to see it suggested in the last issue that if income taxable on the remittance basis is spent overseas on the purchase of movables and the movables are then brought within the UK by the taxpayer, this without more constitutes a taxable remittance. The example given was the purchase abroad of a car which is then brought to the UK, but the same point arises as respects the clothes worn by a taxpayer when he lands at Heathrow: if the clothes are purchased abroad with income taxable on the remittance basis, the proposition must be that the clothes are a taxable remittance.

A glance at the statute is all that is needed to show that the proposition cannot be sustained. The basis of charging remittances is laid down by s.65(5) of the Taxes Act. The sub-section speaks of "actual sums received in the United Kingdom". As respects Case V it goes on to list four ways by which a sum may be so received, viz:

(a) from remittances payable in the UK,

(b) from property imported,

(c) from money or value arising from property not imported, or

(d) from money or value so received on credit or on account in respect of any such remittances, property, money, or value brought or to be brought into the UK.

[the letters (a)-(d) are not in the statute but are included here for convenience]

The reference to "property imported" in (b) will be noted, but the basis of charge is "actual sums received in the UK *from* property imported". In *Thomson v Moyse* 39 TC 291, Lord Reid explained that heads (a)-(c) can be traced back to Addington's Act of 1803 in which they were included as a means of dealing with profits from plantations in the West Indies. (Head (d) was an anti-avoidance measure introduced in 1805!). Of head (b) (property imported), Lord Reid said at page 332, that this covered the case where the plantation owner effects a remittance by

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[1] Richard Bramwell QC, 3 Temple Gardens, Temple, London EC4Y 9AU.
Tel: 071-353 7884 Fax: 071-583 2044

"bringing, say, his sugar to this country and selling it here"

So, a taxpayer does not make a remittance within Case V by spending Case V income abroad on a car and bringing the car to this country. Nor does he make a remittance if he part-exchanges the car here for another (even though the part-exchange allowance is calculated in cash). But if he sells the car in this country, then, as with the consignment of sugar, the taxpayer "receives a sum here from property imported".

A NOTE FROM THE CONSULTING EDITOR

When a decision is made *per incuriam*, it is made in ignorance of some relevant statute or authority. Before writing my article I *had* read s.65(5). I cannot believe that anyone should suppose I could have been so unprofessional as not to have done. No doubt, therefore, Richard Bramwell is using the expression in an untechnical and humorous sense. I had also re-read some of the "wealth of authority about these provisions".[1] They warn us that they are not to be construed at a glance. As Lord Radcliffe said in *Thomson v Moyse* 39 TC 291 at 335:

> "... these four sub-heads, as they have been called, should be treated as illustrations (no doubt intended to form a comprehensive list of illustrations) of the way in which, when foreign income is transmitted to this country, the transmission can be effected and the sterling sums obtained. These sub-heads, which are not at all very clearly phrased should accordingly be construed according to their general sense and without too much nicety of language ... I draw attention to this because one or two of the authorities have treated these and other words with more semantic scruple than is appropriate to the context ..."

The more I study tax law, the more I hesitate to ascribe to the words of a taxing statute what I may at first glance take to be their ordinary and natural meaning. Courts have so often, on close inspection, discovered rather different meanings. In this case, I respectfully consider that the Court would hold s.65(5) to have quite a different effect from that supposed by my learned friend. A closely reasoned reply, supported by an analysis of the cases, will be needed. This I intend to write for the next issue of this Review.

Robert Venables QC

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[1] Per Lord Reid in *Thomson v Moyse* 39 TC 291 at 329, where he points out that "at first sight" it would seem that the provisions are satisfied, but agrees that "obviously the case cannot be disposed of as easily as that" on account of the wealth of authority.