

THE VIEW FROM THE BENCH

by John Walters Q.C.

I am sometimes asked what effect my experience as a Tribunal judge has had on my practice as an adviser and advocate. There have certainly been cases where I have decided an appeal against the taxpayer when his advocate has advanced arguments which I know I would have thought persuasive when getting up a case as an advocate, but which have been shown to be wrong when HMRC's case was professionally presented at Tribunal. In such cases I have been sympathetic to the losing advocate because I know that the case he had to meet had been inadequately presented in correspondence. The appellant in such cases – HMRC's 'customer' – has had reason to be dissatisfied with the services supplied to him by HMRC.

Of course, as a judge, I am much more in tune with the prevailing currents of judicial thinking on topical matters. The Tribunal's approach in avoidance cases is an obvious case in point, but I would also mention procedural matters. Case management issues are very largely left to the discretion of the judge handling an appeal at a particular time, and, for example, his/her decision on whether to hear a point as a preliminary issue can often be effectively unappealable, and will usually be taken against the background of the current Tribunal thinking on the desirability of preliminary issues being litigated as a matter of general principle. They are generally regarded as undesirable because they can easily lead to procedural inconvenience and delay later on, if the preliminary issue is appealed before the substance of the case has been heard and decided at first instance. Nevertheless I have learned to my cost – by not allowing a preliminary issue to be taken and hearing the whole appeal involving 8 distinct issues, any one of which would have justified a case on its own¹

– that a preliminary issue can in the right circumstances be the appropriate way to manage an appeal.

It is useful, also, to have some personal knowledge of the other Tribunal judges and the issues or factors to which they might be sensitive. We are lucky to have in our Tax Tribunals a cadre of intelligent and experienced judges, and we are soon to get a good many more, and it is expected that the issue of follower and accelerated payment notices is going to lead to a surge in the number of appeals.

Endnotes

- 1 See: *Ilfte News and Media Limited and Others v. Revenue and Customs Commissioners TC 02365* (1 November 2012)