



The Treasury *Yn Tashtey*

INCOME TAX DIVISION

Government Office, Douglas
Isle of Man, British Isles
IM1 3TX

Assessor
M Couch

Telephone: (01624) 685400
Fax: (01624) 685351
E-mail: incometax@itd.treasury.gov.im
Website: www.gov.im/incometax

DECISIONS OF THE INCOME TAX COMMISSIONERS

CD 1/11

Date: 22 March 2011

TRADING IN LAND

Introduction

Appeals before the Income Tax Commissioners are heard in private and are therefore not reportable. However, both the Income Tax Commissioners and the Assessor would like the principles behind judgements to be made public. Although it is not possible to publish the particular judgement, it is possible to issue a document detailing the main issues of the case and the reason the Commissioners came to their decision.

This document is therefore the first in a series that will deal with judgements of the Income Tax Commissioners. It is important to note that it has been approved for issue by the Chairman of the Income Tax Commissioners and reflects fairly the points in the case.

Main Facts of the Case

Two connected taxpayers were the appellants for two separate appeals, and it was agreed that the appeals should be heard together. Whilst the transactions were conducted in separate companies, they were connected and a conclusion could not be reached without being considered together, otherwise the full facts would not be disclosed.

Both taxpayers had purchased and sold similar properties and assessments were raised by the Assessor on the profit received from the sale of these properties. A third connected taxpayer had purchased and sold a similar property some years earlier.

The Taxpayers' Case

The taxpayers appealed against income tax assessments for the year 2003/04 and a distributable profits charge assessment for the year 2007/08. The taxpayers claimed that both assessments were incorrect because they treated "the gain on sale of investment property as a trading gain". The taxpayers asserted that they were not engaged in a trading activity and "the properties were acquired with the intention of being held as income generating investments".

The Assessor's Case

The Assessor argued that the badges or hallmarks of trade, as set out in the Report of the Royal Commission on the Taxation of Profits and Income in June 1955, applied in *Cooke -v- Haddock* [Annotated Tax Cases 1960, p244] and approved for application in the Isle of Man in the judgement delivered by the Staff of Government Division on 14th December 1977 in *Mark William Solly (Assessor of Income Tax) -v- Leonard Foyster*, could be found in the transactions of the taxpayers.

The six "badges" were put forward and the case for them to be applied to the taxpayers' particular circumstances:

- **The subject matter of the transaction** - the subject matter was land which had not yet yielded to its owner an income or personal enjoyment merely by virtue of its ownership and so was more likely to have been acquired with the object of a deal than property that did. Land was a form of property which was regularly traded. Although the Commissioners accepted that the taxpayer did not buy naked land, they were satisfied that he knew that when he bought the buildings he also bought the land.
- **The length of the period of ownership** - the short period (five months) from purchase of the properties by the taxpayers to their decisions to sell was indicative of a trading activity.
- **The frequency or number of similar transactions by the same person** - the two properties were the second and third in the same geographical area which had been purchased and sold for development at a profit by connected taxpayers.
- **Supplementary work on or in connection with the property realised** - there was an application for planning only weeks after the purchase of one property and this was evidence of working up the property to bring it into a more marketable condition and, therefore, evidence of trading.
- **The circumstances that were responsible for the realisation** - there was no explanation of the decision to sell, such as an emergency of call for ready money, which would negate the idea that a plan of dealing had prompted the purchase.
- **Motive** - the Commissioners were invited to infer the taxpayers' motives from the surrounding circumstances in the absence of direct evidence of their intention. The invitation was supported by reference to the shareholder's particular knowledge of the area, his experience in dealing in land and property, his purchase of the properties in his own name before the transfer of the properties to the taxpayers at cost, his and his wife's shareholdings and directorships of the taxpayers, his personal interest in another connected company, the involvement of that company in applying for planning permission, purchasing and developing the sites, the "Property Development" replies on the taxpayers' Company Questionnaires (R141), and the evidenced unsuitability of one site for renting for commercial or industrial use.

Summary

The taxpayers appreciated that "development" and "investment" were (and are) different activities. Were they not, there would have been no need to mention both on one taxpayer's Questionnaire while the other taxpayer's Questionnaire gave "Property Development" as the

activity of the taxpayer and no mention was made of holding investments. The Commissioners considered that there could be no other logical or reasonable reason for using the phrase "property development" on the Questionnaires.

The Commissioners considered that there could be no real doubt that property development had been in mind, at least as an option, from the outset for either or both the taxpayers. The taxpayers did not have a fixed plan but wanted to keep their options open so that they could take advantage of what they might see as the best opportunity. The attempt to let one of the properties was short-lived, no rent was received, and steps to prepare the property for re-development and to obtain planning approval were taken within a matter of months after its purchase by the taxpayer. In respect of the other property, the lack of rental income, the failure to advertise for rent and the absence of any evidence of attempts to find any tenant, despite it being a more modern building than the other, all threw into doubt the taxpayers' claim that the property was purchased as an investment to produce income from rents.

No documentary evidence was produced to support the taxpayers' assertion that the properties were purchased for investment purposes or to counter an implication that the taxpayers' activities were in the nature of an adventure of trade.

The Assessor's treatment of a previous profit made by a connected taxpayer was a "one off" at the time but the Commissioners accepted the argument that, when viewed in conjunction with the sales of these sites by the two taxpayers, the facts tended to support the Assessor's argument of an adventure in the nature of trade by the two taxpayers. A course or pattern of transactions could be discerned from the evidence.

The transactions had sufficient common and connected characteristics to provide clear and unequivocal indications of trading activity by both taxpayers.

After full consideration of all the facts before them and the particular circumstances of each taxpayer, the Commissioners were satisfied that no conclusion could be reached other than that they had engaged in transactions that were an adventure in the nature of a trade.

Therefore, both appeals were dismissed and the assessments confirmed.

M Couch
Assessor of Income Tax