



The Staveley Case
HMRC v Parry & Others
[2020] UKSC 35

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Introduction

On 19 August 2020 the UK Supreme Court handed down judgment in *HMRC v Parry & Others* (“the Staveley Case”)

- Case relates to decisions made by Rachel Staveley in 2006 concerning her pension fund
- Key authority on:
 - Section 10 of the Inheritance Tax Act 1984 (intention to confer gratuitous benefit)
 - Section 268 IHTA 1984 (associated operations) and
 - Section 3(3) IHTA (omission to exercise rights)

The Facts

- 2000 Mrs Staveley divorces. Transfers from company pension into section 32 contract. Pension overfunded.
- 2005 Mrs Staveley makes will in favour of sons
- April 2006 “A Day” - possible to transfer into personal pension plan (“PPP”)
- October 2006 Mrs Staveley (incorrectly) told she could transfer into PPP with no IHT consequences
- November 2006 Mrs Staveley transfer fund into PPP. Nominates sons as beneficiaries
- December 2006 Mrs Staveley dies without taking benefits from PPP
- 2007 PPP administrator pays fund to sons.

The Charge to Tax

- HMRC seek to charge IHT on two events each said to constitute a lifetime chargeable transfer for IHT.
- The transfer from the section 32 contract to the PPP (“The Transfer”). As a result of the Transfer the value of Mrs Staveley’s estate was reduced.
- The omission to take pension benefits from the PPP (“The Omission”). This is said by HMRC to be a deemed transfer of value for IHT purposes under section 3(3) IHTA

The Transfer - Section 10 IHTA

- (1) A disposition is not a transfer of value if it is shown that it was not intended, and was not made in a transaction intended, to confer any gratuitous benefit on any person and either—
 - (a) that it was made in a transaction at arm's length between persons not connected with each other, or
 - (b) that it was such as might be expected to be made in a transaction at arm's length between persons not connected with each other.

- (3) In this section—
 - “disposition” includes anything treated as a disposition by virtue of section 3(3) above;
 - “transaction” includes a series of transactions and any associated operations

The Transfer - Associated Operations

268(1) In this Act “associated operations” means, subject to subsection (2) below, any two or more operations of any kind, being—

- (a) operations which affect the same property, or one of which affects some property and the other or others of which affect property which represents, whether directly or indirectly, that property, or income arising from that property, or any property representing accumulations of any such income, or
- (b) any two operations of which one is effected with reference to the other, or with a view to enabling the other to be effected or facilitating its being effected, and any further operation having a like relation to any of those two, and so on.

whether those operations are effected by the same person or different persons, and whether or not they are simultaneous; and “operation” includes an omission.

The Omission Issue - Section 3(3) IHTA

3(3) Where the value of a person's estate is diminished, and the value—

- (a) of another person's estate, or
- (b) of any settled property, other than settled property treated by section 49(1) below as property to which a person is beneficially entitled,

is increased by the first-mentioned person's omission to exercise a right, he shall be treated for the purposes of this section as having made a disposition at the time (or latest time) when he could have exercised the right, unless it is shown that the omission was not deliberate.

Procedural History

- 2012 Notice of Determination Issued
- 2014 First Tier Tribunal (Judge Mosedale and Mr Menzies-Conacher)
 - Taxpayers win on Transfer; HMRC win on Omission
- 2016 Upper Tribunal (Barling J and Judge Berner)
 - Taxpayers win on both issues
- 2018 Court of Appeal (Newey LJ, Lady Arden and Birss J)
 - HMRC win on both issues
- 2019-20 Supreme Court (Reed PSC, Hodge DPSC, Black, Kitchin, Sales JJSC)

The Supreme Court - Transfer Issue 1

- HMRC arguing for narrow approach - intention to replace existing benefit sufficient
- Taxpayers arguing that one had to look at position before and afterwards to see whether there was an intention to improve sons' position
- UKSC held (5-0) that taxpayer's argument correct. Expressly rejected HMRC's "return to zero" approach.

The Transfer Issue 2

- What is an associated operation? - *IRC v Macpherson* [1989] AC 159
 - “If an associated operation is not intended to confer [a gratuitous benefit] it is not relevant for the purpose of the subsection. That is not to say that it must necessarily confer a benefit but it must form a part of and contribute to a scheme which does confer a benefit.
- UKSC rejected (5-0) that each associated operation must itself be intended to confer a gratuitous benefit - **BUT...**

The Transfer Issue 2

- The UKSC held (3-2; Hodge and Sales dissenting) that the Transfer and the Omission were not relevantly linked in a “scheme”. The scheme to benefit the sons was her decision not to take a pension. The Transfer was not needed to effect that scheme
- The FTT were entitled to find (“on the very unusual evidence in this case”) that the Transfer was not linked to the Omission by motive.
- The taxpayers’ appeal on the Transfer issue was allowed.

The Omission Issue

- UKSC dismissed (5-0) the taxpayers' appeal on the Omission
- All that is required for s3(3) to apply is that the increase in "another person's estate" is caused "by" the relevant omission.
- Although the PPP administrator had a genuine (limited) discretion, that did not break the chain of causation between the omission to take benefits and the increase in the sons' estates.
- Parliament has subsequently legislated to exclude omissions to exercise pension rights from a potential charge to IHT by enacting FA 2011, inserting a new s 12(2ZA) IHTA 1984 (with effect in respect of omissions after 6 April 2011)

Conclusions

- Decision on s10 of particular importance. Likely to affect HMRC's attempts to tax transfers between pension funds.
- Associated Operations. Clarification on extent to which relevant intention must affect each “step” - but will new test of “necessity” cause problems?
- Omissions. Clarity on meaning of section 3(3) - but how remote can the omission be?



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