

Treatment of foreign pension contributions

Under Finnish legislation, contributions to voluntary pension schemes based in Finland were wholly or partly tax deductible, but where the insurance company was based outside Finland no tax deduction was available. Danner continued to pay pension contributions to two German companies after he had moved back to Finland. He was refused a deduction by the Finnish tax authorities. His appeal was referred to the ECJ.

The point at issue

Whether the restriction on a deduction for foreign pension contributions contravened article 59, which provides

that '... restrictions on freedom to provide services within the Community shall be ... abolished ...'.

The decision

Prima facie the legislation did contravene article 59. There was an attempt to justify the legislation under three headings:

- ◆ the need to ensure the coherence of the Finnish tax system: it was found that there was no direct connection between tax relief for pension contributions, taxation of the ultimate pensions paid and taxation of insurance companies;
- ◆ the effectiveness of fiscal controls: it was found that Council Directive

77/799/EEC on mutual assistance in taxation would enable the Finnish authorities to obtain relevant information on German pension contributions;

- ◆ the need to preserve the integrity of the tax base: this was held not to constitute a justification of restrictions on the freedom of services, either under article 56 of the EC Treaty or as a matter of overriding general interest.

Article 59 precluded denial of relief for foreign pension contributions if relief was available for equivalent contributions to national organisations, unless the legislation also provided for the resulting foreign pensions to be tax free.

Proceedings brought by Danner Case-C-136/00 ECJ – 3 October 2002

Meaning of 'payment'

In the context of an advance corporation tax case, the meaning of 'payment' in *TMA 1970 s87* and of 'pays' in *s239* and *s246N(2)* was at issue. The taxpayer contended that these terms included set-off. The judge held that they did not. The taxpayer appealed.

The point at issue

Did the terms 'payment' and 'pays' include set-off?

The decision

The terms could not be extended to cover set-off. It was not the literal meaning of the word and *ICTA 1988 s246N(2)* distinguished set-off from payment. In addition, the law relating to set-off indicated a very different concept from payment, and therefore, had set-off been intended, the wording of the legislation would have made it plain.

Burton (Insp of Taxes) v Mellham Ltd – CA – 17 January 2003

Capital allowance and avoidance

Capital allowances were claimed by B on expenditure on the acquisition, in the course of its trade, of a gas pipeline. B contracted to purchase a natural gas pipeline between Scotland and Eire from the Irish Gas Board for £91 million, and had then entered into a lease agreement with the Board to lease the pipeline back

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Property tax tips

1. Rent a Room Scheme: £4,250 p.a.

Are you maximising the relief? It is often overlooked that if the rent is more than £4,250 you can either claim the rent less expenses or the rent less the limit of £4,250. This can be very beneficial for rents in the region of £5,000 plus category. For example: for rent of £6,000 the taxable earnings are £1,750 (£6,000 – £4,250).

2. Buy to let income – remember to tell the Revenue

If income is covered by interest and expenses taxpayers can fail to notify to the Inland Revenue the new source of income as they think there is no tax to pay. All new sources of income must be notified to the Inland Revenue within time limits.

3. Claim for business use of home – self-employed

There are concerns that claiming for

use of home as office will trigger some capital gains tax liability through loss of principal private residence relief. The key is to ensure that no specific area has dedicated business use.

4. Furnished holiday lets

It is often overlooked that business gains can be rolled over into property that qualifies as a 'furnished holiday let'. Also, the losses can be offset against total income i.e. income from other sources. The gain on the sale of the property can be eligible for business reliefs.

5. The tax disadvantages of being a landlord

Rental income is generally not treated as trading income, therefore it does not qualify for pension relief. Above all the property does not qualify for business reliefs for capital gains tax and inheritance tax. With property prices so high the

ability for the property to escape inheritance tax and qualify for business relief for capital gains tax such as rollover relief or business asset taper relief may be crucial.

However, if services are provided with the rent then it can be treated as a trade and have all the reliefs. It might be important to move the asset into new ownership so as not to get tainted taper. Recent Inland Revenue guidance has yet to clarify the difference between trade and business.

6. Business Gains 'rolled over' into farmland/business property

Business gains can be rolled over into farmland business property so as to mitigate capital gains tax liability. 'Death' is not a chargeable event so if the owner dies owning the farmland then they escape capital gains tax.

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