

Reliance on HMRC Manuals

(Lecture P1070 – 6.04 minutes)

If a taxpayer wishes to rely on the content of one of the HMRC Manuals, he needs to be quite sure that they will provide him with the comfort that he requires. This was the issue before the High Court recently when a company sought a Judicial Review to force HMRC to adhere to the terms of their Manuals (*Regina (on the application of Aozora GMAC Investment Ltd) v HMRC (2017)*). HMRC's argument was that the Manual was wrong and that the company was anyway not able to rely on it.

The High Court decided that HMRC were obliged to honour their Manuals, but only if:

1. HMRC had made a representation in the Manual under consideration;
2. the representation in the Manual was clear, unambiguous and devoid of relevant qualification;
3. the taxpayer relied on the Manual to his detriment; and
4. it gave rise to conspicuous unfairness.

These are tough conditions but not new and do not appear to break any new ground.

In this case, the High Court found that the first two conditions had been satisfied (which is good news for taxpayers generally), but the judge went on to say that there was no evidence that the company had actually relied on the Manual (or indeed that they were even aware of it) before undertaking the relevant transaction. Without such reliance, it is difficult to argue that it was conspicuously unfair for HMRC not to follow the content of their Manual.

This was a pity for the company, but it demonstrates that one cannot just point at the Manuals and insist that HMRC follow them. If they fail to do so, all four of the conditions spelled out above need to be satisfied.

Having regard to the above, it was interesting – not to say ironic – to read the First-Tier Tribunal's decision in *Cooke v HMRC (2017)*, released late last year. In that case, HMRC claimed that the taxpayer (Mr Cooke) was careless and culpable because he had failed to check the relevant HMRC Manual to do with double taxation relief. Can that really be so? Is it careless not to check the Manual which HMRC might say is wrong and on which you cannot rely anyway? One is surprised that Mr Cooke did not argue that relying on the Manuals should itself be regarded as careless conduct!

Contributed by Robert Jamieson