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**Case Comment**

# Murray Group Holdings Ltd and Others v HMRC: HMRC's new tactics win the day in the Court of Session

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Income and Corporation Taxes Act 1988 (c.1)

**Cases:**

Murray Group Holdings Ltd v Revenue and Customs Commissioners [2015] CSIH 77; 2015 S.L.T. 765 (IH (2 Div))

Murray Group Holdings Ltd v Revenue and Customs Commissioners [2012] UKFTT 692 (TC); [2013] S.F.T.D. 149 (FTT (Tax))

Murray Group Holdings Ltd v Revenue and Customs Commissioners [2014] UKUT 292 (TCC); [2015] S.T.C. 1 (UT (Tax))

## *B.T.R. 27 Introduction

The litigation concerning the tax treatment of payments into and out of the Murray Group Remuneration Trust has created more media headlines in Scotland than any other recent tax case, due to the involvement of Glasgow Rangers Football Club Ltd (Rangers). Anything to do with Rangers is closely followed all over Scotland, so the outcome of each stage of what has become known as "the Rangers case" has been widely discussed, with anticipation then building for the "next round" in the appeal process, in much the same way as the press and public follow a football tournament.

The litigation has also received widespread attention among taxation practitioners, who hoped that it would clarify the law and help to settle many open cases concerning remuneration trusts. Readers of this *Review* will probably be aware that the appellants in the case were companies in the Murray Group which had made contributions, for the benefit of some of their employees, to the Group's Remuneration Trust; that the taxpayers' appeals against PAYE determinations and notices of liability to National Insurance contributions (NICs) were upheld by a majority of two to one in the First-tier Tribunal (FTT) (with a powerful dissenting decision by the member in the minority)[1]; that HMRC then appealed unsuccessfully to the Upper Tribunal (UT)[2]; and that, most recently, HMRC's further appeal to the Inner House of the Court of Session has been successful.[3] Collectively this note will refer to these cases as "*Murray Group Holdings*". It is *B.T.R. 28 understood that the liquidator of the "old" Rangers Football Club (the Club continues to exist in the form of a new corporate body) has applied for leave to appeal to the Supreme Court. At the time of writing the outcome of that application is not yet known, although the case seems eminently suitable for hearing at the highest level.

The main issue in the case was whether the arrangements relating to the Remuneration Trust gave rise to taxable earnings or emoluments, and earnings which were subject to NICs, as defined by the basic charging provisions of the Income and Corporation Taxes Act 1988 (ICTA 1988),[4] the Income Tax (Earnings and Pensions) Act 2003 (ITEPA)[5] and the Social Security Contributions and Benefits Act 1992.[6] (It was not suggested that "earnings" could mean one thing for the purposes of tax and another for the purposes of NICs.)[7] The case concerned the fiscal years 2001–2002 to 2008–2009. Those years pre-date the introduction of the "disguised remuneration" legislation.[8] However, the outcome of the case in the Court of Session is likely to have left open significant issues concerning the way in which the disguised remuneration rules will apply to payments made from some remuneration trusts in future.

Apart from the central question of how, or whether, funds entering and leaving a Remuneration Trust should be subjected to tax and NICs, the twists and turns of *Murray Group Holdings* are a fascinating illustration of the judicial process at work. There is much to be learned, on both procedural and substantive issues, from reading all the Tribunal decisions as well as the Inner House's judgment. No case note of reasonable length could provide a comprehensive analysis of all the points which arose, and what follows is necessarily selective.

## The facts

The Murray Group was a large group of companies engaged in a variety of businesses. Most of the companies had nothing to do with sport, the exception being Rangers.

In 2001 a holding companies in the Murray Group established a Remuneration Trust, governed by English law (the principal trust). The beneficiaries were the employees of Murray Group companies and their families. The trustees had power to apply the income and capital of the trust for such employees and in such manner as they saw fit.

Rangers made contributions to the principal trust for the benefit of its players. Other employing companies in the Group made contributions for the benefit of their executives. In every case, at the request of the employer, the principal trustees advanced the sums contributed to sub-trusts which they established for the benefit of particular players or executives. Players or executives also became protectors of their sub-trusts, with power to change the beneficiaries and change the trustees.

The players or executives then usually applied for a large, unsecured 10 year loan from their sub-trusts. The trustees invariably granted such applications. The terms of the loan did not require ***B.T.R. 29** interest to be paid year by year. However, the loan was advanced on a discounted basis; the sum to be repaid at the end of the term of the loan was significantly higher than the initial advance, with the intention that no chargeable benefit in kind would arise. The players and employees expected that the trustees would renew the loans at the end of their terms.

From 2001 onwards, 108 sub-trusts were created (81 for Rangers' players and 27 for executives of Murray Group companies) and over £50 million was contributed to the principal trust, most of which was in turn contributed to the sub-trusts. The principal trust made 457 payments to sub-trusts and the sub-trusts advanced 453 loans to players and executives.

The arrangements made with players relating to the creation and funding of their sub-trusts differed somewhat from those made with the executives. In the case of the players, the sub-trust was created in accordance with a "side letter" to each player's contract of employment. In the case of the executives there were no side letters; rather, the executive would indicate to his employer that, if the employer decided to award him a bonus, he would like it to be paid to the principal trust.

HMRC took the view that the legal form of the contributions to the principal trust, then onward to the sub-trusts and the making of loans could, with the assistance of the *Ramsay* principle,[9] be collapsed into a payment of earnings to the players and executives, payment taking place either when the funds were advanced to the sub-trust or when the sub-trust made a loan to an employee. HMRC made determinations of PAYE tax and decisions about liability to NICs accordingly, against which the taxpayer employing companies appealed.

## The decisions in the FTT

### *The majority decision in the FTT*

The majority of the FTT regarded the case as one of "aggressive tax avoidance"[10] but nevertheless rejected HMRC's argument based on the *Ramsay* principle. In the majority's view the funds in the sub-trust were not unreservedly at the disposal of the players or executives and the loans from the sub-trusts were genuinely loans.[11] It followed that the scheme could not be collapsed or looked through in order to treat all the payments into the sub-trusts, or all the loans, as the payment of earnings to the players and executives.

Having rejected the argument based on *Ramsay*, the majority also considered whether any liability to PAYE and NICs arose on other grounds. In this regard, they distinguished between sums paid to the principal trust which represented (or replaced) executives' bonuses and payments into trust for the players.[12]

The majority held that sums paid to the principal trust which represented (or replaced) executives' annual bonuses were not earnings, because ***B.T.R. 30**

"… these were entirely discretionary with no contractual entitlement. While the views of the individual employee would be canvassed, he never had an enforceable claim to a bonus or other benefit. The arrangements were very informal and at most offered only a hope or expectation … Quite simply, if the employee expressed interest, then the employer would make a payment to the principal trust." [13]

In dealing with payments into trust for the players, pursuant to the side letters, the majority regarded most of these as "discretionary" and thus non-taxable.[14] But, in the case of five players, certain payments to which they were contractually entitled had been paid into the principal trust; the appellants conceded that those payments were "earnings" and liable to PAYE and NICs.[15]

### The minority decision in the FTT

The dissenting member produced a full decision in her own right, indeed one which was rather longer than the majority decision. She adopted a more critical and sceptical approach than that of the majority and reached different and more extensive findings in fact[16] and in law.[17] She accepted HMRC's submission that the funding of the trusts and the lending of money to the players and executives was a composite transaction which should be treated, under the *Ramsay* principle, as equivalent to the payment of earnings to the players and executives by their employers.[18]

### Commentary on the decisions in the FTT

Strong dissenting opinions are more common in the courts than in tribunals. Wherever they occur, they are a stark reminder of the way in which different approaches to the judicial task can produce radically different decisions based on the same evidence and submissions. One has little doubt that most reasonable taxpayers on the Morningside omnibus would regard the minority decision in the FTT in *Murray Group Holdings* as having adopted a more realistic analysis and as having reached a fairer conclusion. On the other hand, few (if any) of the passengers on the Morningside omnibus ever have the difficult and anxious task of doing justice according to law at first instance in such a prominent and complex case as *Murray Group Holdings*.

In any event, the majority decision is a reminder that the *Ramsay* principle is no certain remedy for tax avoidance, particularly where what HMRC are seeking to achieve is an outcome in tax terms (payment of earnings to or for the benefit of employees) which is at variance with the ostensible legal form (money held by trustees and lent to the employees). Where, as in *Murray Group Holdings*, HMRC make plain that they do not regard the transactions in question as shams,[19] there may then be little room left for a recharacterisation based on the *Ramsay* principle.

It may also be said, in particular, that the *Ramsay* principle's track record against the avoidance of PAYE and NICs is uneven; although the principle was successfully deployed by HMRC in ***B.T.R. 31** cases such as *DTE Financial Services Ltd v Wilson* [20] and *Aberdeen Asset Management plc v HMRC*, [21] it failed in other cases, such as *Dextra Accessories Ltd and others v Macdonald* [22] and *Sempra Metals Ltd v HMRC* (*Sempra Metals*).[23]

On first reading the decisions of the FTT one may therefore feel surprised that HMRC appeared to rely exclusively, or at least very heavily, on the *Ramsay* principle. In fairness to HMRC—although this is not obvious from the decisions of the FTT—their case did, in fact, include other arguments, alternative to their main contention based on the *Ramsay* principle. These alternative arguments are most clearly summarised in the decision of the UT and will be mentioned below.

On a different point, although the majority decision in the FTT made clear findings in relation to the nature of payments which were made to the principal trust for the benefit of executives,[24] the findings relating to the nature of payments which were made to the principal trust for the benefit of players, in accordance with the terms of the side letters, are compressed and rather difficult to follow.[25]

This is at least partly because the majority decision does not actually quote the terms of any side letter. The minority decision refers to side letters being in "a standard format with similar wording" and includes a quotation from one particular side letter[26] which is summarised as stating that Rangers "would undertake to contribute specified sums at specified dates into the employee's sub-trust".[27]

However, as has already been mentioned above,[28] the majority decision records a concession by the appellants that tax and NICs were indeed payable where, exceptionally, sums which were contractually due to a player had been paid into the trust for his benefit. It is difficult to reconcile that concession with the idea that side letters uniformly contained contractual obligations to pay particular sums on particular dates.

Indeed, if it were the case that the side letters did uniformly provide for the payment to the principal trust of particular sums on particular dates, the implementation of the scheme must have departed from the original planning to a significant extent. It was generally recommended that payments entering remuneration trusts should be made at the employer's discretion and should *not* have been contractually due to the employee. ***B.T.R. 32** [29]

In any event, it seems unfortunate that the case emerged from the FTT without a clear and undisputed record of exactly what the side letters said. More will be said on this point below in considering the Court of Session's judgment.

## The decision of the UT

The UT found no significant errors of law in the decision of the majority of the FTT. In the light of subsequent developments in the Court of Session, it is unnecessary to deal in any great depth with the UT's decision, which can be seen, generally, as an illustration of the difficulties either side is likely to face in attempting to have a first instance decision on the application of the *Ramsay* principle overturned on appeal; the fact-finder's discretion in assessing the evidence will not lightly be interfered with.

HMRC's submission before the UT was that payment of earnings occurred when funds were transferred to the sub-trusts or—alternatively—when loans were advanced by the sub-trusts.[30] The main basis for both submissions was again the *Ramsay* principle; the UT was invited by HMRC to find that the FTT had made an error of law in failing to recharacterise the appointment of funds to the sub-trust, or the making of a loan by the sub-trust, as involving the payment of earnings.[31] However, after a relatively brief discussion[32] the UT concluded that the FTT's approach could not be faulted.

HMRC also submitted that the FTT had erred in rejecting certain other arguments which had been advanced before it. Of these, the most relevant for present purposes was the "directed payments" argument. HMRC argued that the executives and players had made a choice, at a point in time when they were legally entitled to receive money as a reward for their services, for the money to be paid into trust rather than paid to them, and that such a choice was ineffective for tax purposes. HMRC complained that the majority below had overlooked this argument and thereby erred in law. The UT was "hesitant to conclude" that the FTT had overlooked this argument, commenting

"… there does not seem to have been a present entitlement to earnings at the relevant times … Nor at the critical times did the employees have a choice between payroll payments and remuneration trust payments (see paras 205 (executives) and 207-8 (footballers))." [33]

The paragraphs of the FTT majority decision to which the UT here refers are those (already quoted above[34]) in which the executives' bonuses are described as "entirely discretionary with no contractual entitlement" and the players' side letter payments are described as "discretionary". The UT interpreted these paragraphs as containing findings which were inconsistent with the "directed payments" argument and therefore constituted a rebuttal of it. ***B.T.R. 33**

Both the FTT and the UT thus seem to have accepted the submission made on behalf of the taxpayers[35] to the effect that an expression by an employee of his preference that he should not receive a sum of remuneration himself, but rather that the equivalent sum should be paid in to a trust, is effective to avoid taxation if made at a time when the employee has no present entitlement to receive that remuneration. Indeed, although HMRC argued that, on the facts, the executives and players had expressed their preferences too late—when they had already become entitled to the income—it is not clear that, before the Tribunals,[36] HMRC sought to contradict the taxpayers' submission as a matter of principle. But, on further appeal to the Court of Session, an effort to contradict that submission came to the very forefront of HMRC's case.

## The Court of Session; Lord Drummond Young's Opinion

The Inner House of the Court of Session unanimously allowed HMRC's appeal, the Opinion of the Court being delivered by Lord Drummond Young.

In the Court of Session HMRC took a very different approach to the one which it had adopted before the UT. In particular, HMRC did not invite the Court to find that there had been any error of law below in failing to recharacterise the transactions generally. Rather, HMRC advanced two main arguments: one which sought recharacterisation on limited grounds and the other which sought to show that taxable earnings arose at the moment of contribution of funds to the principal trust. The latter argument was accepted by the Court.

The argument for recharacterisation on limited grounds attempted to apply the *Ramsay* principle to the powers of the executives and players as protectors of their sub-trusts. In particular, HMRC argued that in their role as protectors the executives and players could exercise their powers in such a way that the whole of the funds in the sub-trust could be paid to them, that such powers put the funds at the absolute disposal of the employee and that therefore the appointment of funds to the sub-trust should be treated as the payment of earnings. This was rejected by the Court, on the grounds that any such "self-appointment" by the protector would be a breach of his fiduciary duties, would subvert the fundamental purposes of the trust and was not in fact allowed by the terms of the trust.[37]

The other main (and ultimately successful) argument advanced by HMRC was that

"the payment of monies by the relevant employer to the Principal Trust … constituted a payment of taxable earnings, taxable in the hands of the employees whose services were so rewarded. On this basis … the scheme amounted to a mere redirection of earnings which did not remove the employee's liability to income tax." [38]

This "redirection of earnings" argument was a new and stronger version of the "direction of earnings" argument which had been advanced by HMRC in the Tribunals. In particular, HMRC argued for the first time that it did not matter whether the "redirection"—that is, the expression ***B.T.R. 34** of preference by the employee—occurred before or after the employee had become entitled to the income. On this argument, it was immaterial that, as the FTT had found, the payments to the principal trust for executives and players had (with limited exceptions) been made in exercise of the employer's discretion and not pursuant to a contractual obligation.[39]

Although recognising that "none of the primary authorities relied on is directly in point in the present case"[40] Lord Drummond Young had relatively little difficulty in finding for HMRC. The following excerpts from the Court's Opinion encapsulate his reasoning:

[29]

"… The critical question is whether the payments made by the employing companies were part of the consideration for the employees' services; if they were, they are emoluments or earnings and are taxable. …

[53]

The definition of earnings in section 62 [ITEPA] is wide; it comprises any salary, wages or fee, and also any gratuity or incidental benefit if it is money or money's worth, or anything else that constitutes an emolument. The critical feature of an emolument and of earnings as so defined is that it represents the product of the employee's work—his personal exertion in the course of his employment. … [I]ncome derived from the personal exertions of the taxpayer is his income for tax purposes, even if it is paid to a third party. …

[56]

The fundamental principle that emerges from [the] cases appears to us to be clear; if income is derived from an employee's services *qua* employee, it is an emolument or earnings, and is thus assessable to income tax, even if the employee requests or agrees that it be redirected to a third party …

[58]

… In assessing the liability of a transaction to taxation, it is imperative in every case to determine the true nature of the transaction, viewed realistically; *Barclays Mercantile Business Finance Ltd v Mawson [2004] UKHL 51, [2005] STC 1* at paragraphs 32 and 35, quoting *Collector of Stamp Revenue v Arrowtown Assets Ltd [2003] HKCFA 46*, at paragraph 35 … In the present case, therefore, it is essential to have regard to the true nature of the individual transactions involving the Principal Trust, particular employees and the sub-trusts set up in respect of each employee. On such an approach, it must be determined whether the payments by the relevant employer into the Principal Trust, and in due course the payments from the Principal Trust to the various sub-trusts were derived from the employment of the employees in question. If they were, they amounted to the employees' emoluments or earnings.

[59]

… [I]n relation to employees other than footballers, the critical element is that bonuses were paid on the basis of the work performance of the employee in question … it is not in our opinion necessary that there should be any prior obligation provided that the payment itself can be shown to be remuneration for the employee's services. The mere making of a payment is sufficient to give rise to an emolument or earnings … On the foregoing basis, we are of opinion that the sums received ***B.T.R. 35** by the Principal Trust … amounted to a mere redirection of income and thus constituted emoluments or earnings of the employees in question.

[60]

In relation to footballers … It seems to us to be self-evident that the obligations in the side letter were part of the employee's employment package and provided him with additional remuneration. … Once it is accepted that the bonus payments represented consideration for a footballer's services *qua* employee, it inevitably follows that those payments represented emolument or earnings of the footballer in question."

Lord Drummond Young also dismissed any suggestion that treating contributions to the principal trust as earnings could result in double taxation:

"Even if the payments made by employers to the Principal Trust are subject to income tax as emoluments or earnings, subsequent payments would be neither emoluments nor earnings, and therefore would not be subject to income tax." [41]

### *Commentary*

It may be said that HMRC's "redirection of earnings" argument offered the judges in the Court of Session a new way of joining the passengers on the Morningside omnibus, and of adopting their view of the case, which had not been on offer to the Tribunals below, and that this was an offer which the judges willingly accepted. But the "redirection of earnings" argument would not have enabled the Court to reach its desired destination had it not been able also to rely on the modern distillation of the *Ramsay* principle, in *Barclays Mercantile Business Finance Ltd v Mawson* (*Barclays Mercantile*)[42] and take a "realistic approach" to (in other words, make its own interpretation of) the facts as found by the FTT. It is remarkable how, in a case in which the original version of the *Ramsay* principle as a tool for recharacterisation met with only very limited success, the more modern version of the principle, reduced to a realistic approach to the facts and a purposive approach to statutory interpretation, should have made such a late and powerful intervention. Further comment is offered below on four particular aspects of the Opinion of the Court.

### 1. The players' side letters

In summarising the facts, Lord Drummond Young quoted from a player's side letter which, under the heading "Annual Salary", committed Rangers to paying £8,000 per week to the principal trust.[43] It is not clear whether the player concerned was one of the "contractual obligation" exceptions in respect of whom liability was conceded before the FTT.[44] Having quoted from the side letter, his Lordship remarked: "that demonstrates that the payment to the Principal Trust was part of the total remuneration".[45] However, at other points in his judgment he seems to regard payments made in accordance with the side letters as "discretionary" rather than as the fruit of ***B.T.R. 36** a contractual obligation.[46] This uncertainty as to exactly what the players were entitled to, and what came to them at Rangers' discretion, is (at the least) somewhat confusing.

## 2. Earnings?

As we have seen, Lord Drummond Young upheld the "redirection of earnings" principle, to the effect that the redirection of taxable earnings by the executives and players to the principal trust was ineffective. A necessary first step here is to hold that taxable earnings arose in the first place. Although, admittedly, a preference expressed on the part of players or executives that a sum be paid to the principal trust could be regarded as an item of evidence tending to show that the sum was earnings, it cannot be supposed that taxable earnings were, in every case, created by the act of redirection where they did not previously exist. Indeed, it seems to be inherent in Lord Drummond Young's position that taxable earnings could have arisen if the employers had simply contributed money to the principal trust without seeking the views of the players and executives at all; it was enough that the payments by the employers to the principal trust were consideration for services rendered by the players.

As Lord Drummond Young was aware, his wide approach to the interpretation of "earnings" seems to contrast with the approach recently taken by the Supreme Court in *HMRC v Forde and McHugh Ltd* (*Forde and McHugh*)[47] where it was held that funds contributed by a company to an unapproved pension scheme for the benefit of a director were not "earnings" for the purposes of NICs. In particular, the Court rejected HMRC's submission that the contribution was "earnings" simply because "it was a sum paid as a *quid pro quo* for past or future services".[48] Lord Hodge made clear that not every such payment to an employee falls to be treated as earnings and, indeed, gave as an example of "non-earnings" a sum paid to a remuneration trust.[49] But the broad approach which was clearly rejected by one court in *Forde and McHugh* [50] has now been enthusiastically embraced by another in *Murray Group Holdings*.[51] Some of Lord Hodge's remarks may strictly be obiter dicta and, as Lord Drummond Young pointed out,[52] the two cases may formally be distinguishable. However, at face value there is an obvious conflict between them and, in practice, substantial uncertainty is bound to result. It is to be hoped, if *Murray Group Holdings* is the subject of further appeal, that the true line between the two cases will be firmly drawn by the Supreme Court.

## 3. The redirection principle

As Lord Drummond Young recognised,[53] none of the cases which he cited indubitably supported the wide scope of the redirection principle which he derived from them. ***B.T.R. 37***

The strongest precedent is probably *Hadlee v Commissioner of Inland Revenue* (*Hadlee*).[54] Other cases cited by Lord Drummond Young only go as far as showing that assignments of income are ineffective for tax purposes if they are made after the income has arisen. In *Hadlee* [55] a partner in a firm of accountants in New Zealand assigned certain partnership rights to a trust for the benefit of his family. This was held to be ineffective, for the purposes of New Zealand's Income Tax Act, in assigning his right to share in the profits of the firm. The Privy Council approved a dictum in an earlier case to the effect that:

"No taxpayer can, by way of assignment, escape assessment of tax on income resulting from his personal activities—such income always remains truly his income and is derived by him irrespective of the method he may adopt to dispose of it." [56]

It is possible to infer from *Hadlee* that an assignment of income is ineffective at whatever time it is made—either before or after income has arisen. However, there was no discussion in *Hadlee* of the significance (or otherwise) of the timing of the assignment. Moreover, in *Hadlee* counsel for the taxpayer *accepted* that if—as the court found—the taxpayer had merely assigned a right to income (as opposed to assigning the proprietary interest which yielded the income) then the profits would remain assessable on him.[57] It would thus seem that the soundness of the redirection principle was assumed rather than challenged in *Hadlee*. There is also the fact that *Hadlee* concerned Antipodean tax rules and the income of a self-employed person. So *Hadlee* seems rather a slim foundation for so significant a principle. Once again, assuming that the Supreme Court does hear a further appeal in *Murray Group Holdings*, clarification of the status of the redirection principle in UK tax law will be very welcome.

## 4. Double taxation?

Lord Drummond Young was firmly of the view that taxing contributions to the principal trust "on the way in" would not give rise to double taxation. However it is debatable whether his straightforward approach on this point can be maintained for tax years during which the "disguised remuneration" legislation in Part 7A ITEPA, and the equivalent provisions affecting NICs,[58] have effect. In general, this legislation makes employers liable to PAYE and NICs when, after 6 April 2011, remuneration trusts allocate funds to or for the benefit of particular employees, or make payment of money to them, irrespective of when the funds were originally contributed to the trusts. A loan by a trust to an employee is taxed as if it were an outright transfer of money. Certain types of arrangements are excluded from the operation of Part 7A,[59] although these would not seem likely to apply to a remuneration trust with a similar *modus operandi* to that of the Murray Group. So, for such trusts, the possibility of a double charge to PAYE and NICs (for example on the contribution of funds by the employer and on a loan of those funds to an employee) ***B.T.R. 38** would appear to be a real one. The legislation contains transitional provisions dealing with particular situations in which double taxation may arise,[60] but these provisions do not seem to deal with a situation in which an employer's contributions to a trust are treated as taxable earnings.

It is unlikely that any further appeal in *Murray Group Holdings* will resolve the potential issues in this area, since the years under appeal do not extend into the period after Part 7A took effect. If the decision of the Court of Session is not disturbed, a solution might come if the Treasury were to exercise its power[61] to amend Part 7A by Statutory Instrument. Or perhaps an adventurous taxpayer might seek to argue, in further litigation, that any double charge to tax was a disproportionate interference with his property, infringing his rights under article 1 of the First Protocol to the European Convention on Human Rights.[62]

Pending the outcome of the taxpayers' application for leave to appeal, one can say that while it is not yet known whether the normal time allowed for play has elapsed in the *Murray Group Holdings* litigation, it is certain that extra time will be required before all the issues raised by the case are resolved ***B.T.R. 39** .

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1. *Murray Group Holdings Ltd and Others v HMRC (Murray Group FTT) [2012] UKFTT 692 (TC); [2013] SFTD 149*.

2. *HMRC v Murray Group Holdings Ltd and Others (Murray Group UT) [2014] UKUT 292 (TCC); [2015] STC 1*.

3. *Advocate General for Scotland v Murray Group Holdings Ltd (Murray Group CoS) [2015] CSIH 77; 2015 SLT 765*.

4. ICTA 1988 ss.19, 131, 202A and 202B.

5. ITEPA ss.6, 15, 18 and 62.

6. Social Security Contributions and Benefits Act 1992 ss.3 and 6 –9.

7. See, for example, *Murray Group CoS*, above fn.3, *[2015] CSIH 77* at [1]: "… it is a matter of agreement that our decision on the income tax issue will apply equally to NICs".

8. ITEPA Pt 7A, introduced by FA 2011 Sch.2. For NICs the equivalent provisions are found in the Social Security (Contributions) Regulations 2001 (SI 2001/1004) reg.22B and para.2A, Pt 10, Sch.3.

9. "The *Ramsay* principle" is here used as a shorthand reference to the anti-avoidance doctrine developed by the courts in tax cases in the 1970s onwards, taking its name from *WT Ramsay Ltd v IRC [1981] STC 174 (HL)*.

10. *Murray Group FTT*, above fn.1, *[2012] UKFTT 692 (TC)* at [193].

11. *Murray Group FTT*, above fn.1, *[2012] UKFTT 692 (TC)* at [232].

12. *Murray Group FTT*, above fn.1, *[2012] UKFTT 692 (TC)* at [204] and following. The majority broke down its analysis of the payments made to the principal trust into a number of sub-categories of payment; not all of these are dealt with here as the sub-categories did not prove to be of continuing importance in the subsequent history of the case.

13. *Murray Group FTT*, above fn.1, *[2012] UKFTT 692 (TC)* at [205].

14. *Murray Group FTT*, above fn.1, *[2012] UKFTT 692 (TC)* at [208].

15. *Murray Group FTT*, above fn.1, *[2012] UKFTT 692 (TC)* at [210].

16. *Murray Group FTT*, above fn.1, *[2012] UKFTT 692 (TC)* (minority decision) at [166].

17. *Murray Group FTT*, above fn.1, *[2012] UKFTT 692 (TC)* (minority decision) at [167] onwards.

18. *Murray Group FTT*, above fn.1, *[2012] UKFTT 692 (TC)* (minority decision) at [190] and [206].

19. *Murray Group FTT*, above fn.1, *[2012] UKFTT 692 (TC)* at [167] and [191].

20. *DTE Financial Services Ltd v Wilson [2001] EWCA Civ 455; [2001] STC 777*.

21. The litigation culminated in the Inner House of the Court of Session: *Aberdeen Asset Management plc v HMRC [2013] CSIH 84; [2014] STC 438*. For the fullest analysis of the application of the *Ramsay* principle in the case, see the decision of the FTT *[2010] UKFTT 524 (TC)*.

22. *Dextra Accessories Ltd and others v Macdonald [2002] STC (SCD) 413*. HMRC were, however, subsequently successful on other grounds; *Macdonald v Dextra Accessories Ltd [2004] EWCA Civ 22; [2004] STC 339* and *[2005] UKHL 47; [2005] STC 1111*.

23. *Sempra Metals Ltd v HMRC SpC 698; [2008] STC (SCD) 1062*. It is understood that HMRC appealed against the Special Commissioners' decision but the case was settled without a further hearing: *Murray Group UT*, above fn.2, *[2015] STC 1* at [26].

24. *Murray Group FTT*, above fn.1, *[2012] UKFTT 692 (TC)* at [103(xi)] and [205].

25. *Murray Group FTT*, above fn.1, *[2012] UKFTT 692 (TC)* at [103(xii)] and [206]–[208].

26. *Murray Group FTT*, above fn.1, *[2012] UKFTT 692 (TC)* (minority decision) at [34].

27. *Murray Group FTT*, above fn.1, *[2012] UKFTT 692 (TC)* at [82(iii)].

28. See the text above at fn.15.

29. See, for example, *A. Thornhill and P.G. Baxendale-Walker, The Law and Taxation of Remuneration Trusts (London: Key Haven Publications plc, 1997), para.2.1.1 "The Primacy of Discretion."*

30. *Murray Group UT*, above fn.2, *[2015] STC 1* at [18].

31. *Murray Group UT*, above fn.2, *[2015] STC 1* at [68]–[70].

32. The UT's "Consideration and application of [the] *Ramsay* principle" is only six paragraphs long; *Murray Group UT*, above fn.2, *[2015] STC 1* at [58]–[64].

33. *Murray Group UT*, above fn.2, *[2015] STC 1* at [70].

34. See the text above at fnn.13 and 14.

35. *Murray Group UT*, above fn.2, *[2015] STC 1* at [38]–[40].

36. cf. *Murray Group FTT*, above fn.1, *[2012] UKFTT 692 (TC)* at [188]: "As we understand … [counsel for HMRC] did not attack the principles affecting the primary interpretation of earnings and emoluments and the tax and NIC charges in respect of these as set out by [counsel for the taxpayer]."

37. *Murray Group CoS*, above fn.3, *[2015] CSIH 77* at [78]–[89].

38. *Murray Group CoS*, above fn.3, *[2015] CSIH 77* at [36].

39. See the text at fnn.13, 14 and 15 above.

40. *Murray Group CoS*, above fn.3, *[2015] CSIH 77* at [40].

41. *Murray Group CoS*, above fn.3, *[2015] CSIH 77* at [26]; see also [69] and [70].

42. *Barclays Mercantile Business Finance Ltd v Mawson [2005] STC 1 (HL)*.

43. *Murray Group CoS*, above fn.3, *[2015] CSIH 77* at [23].

44. See the text at fn.15 above.

45. *Murray Group CoS*, above fn.3, *[2015] CSIH 77* at [23].

46. *Murray Group CoS*, above fn.3, *[2015] CSIH 77* at [60].

47. *HMRC v Forde and McHugh Ltd [2014] UKSC 14; [2014] STC 724*.

48. *Forde and McHugh*, above fn.47, *[2014] STC 724* at [15].

49. *Forde and McHugh*, above fn.47, *[2014] STC 724* at [16] and [17].

50. *Forde and McHugh*, above fn.47, *[2014] STC 724*.

51. *Murray Group CoS*, above fn.3, *[2015] CSIH 77*.

52. *Murray Group CoS*, above fn.3, *[2015] CSIH 77* at [69].

53. *Murray Group CoS*, above fn.3, *[2015] CSIH 77* at [40].

54. *Hadlee v Commissioner of Inland Revenue [1993] STC 294 (PC)*.

55. *Hadlee*, above fn.54, *[1993] STC 294*.

56. *Spratt v Comr of Inland Revenue [1964] NZLR 272* at 277, per Cooke P; cited in *Hadlee*, above fn.54, *[1993] STC 294* at 296h.

57. *Hadlee*, above fn.54, *[1993] STC 294* at 297b. Mr Andrew Thornhill QC appeared as leading counsel for the taxpayer in *Hadlee*, as he did for Murray Group Holdings in the FTT and UT.

58. Social Security (Contributions) Regulations 2001 (SI 2001/1004) reg.22B and para.2A, Pt 10, Sch.3.

59. ITEPA ss.554E –554X.

60. For example, FA 2011 Sch.2, para.59.

61. Given by FA 2011 Sch.2, para.60.

62. cf. *R. v Harvey [2015] UKSC 73*, per Lords Neuberger and Reed at [32]: "Any provision which entitles the Executive to double recovery from an individual, although not absolutely forbidden by A1P1, is clearly at risk of being found to be disproportionate."