

STRATEGIC TAX PLANNING

UK & International Tax Lawyers

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WHAT TO DO WHEN TAX SCHEMES DON'T WORK...

Written by Daniel Feingold, Tax Barrister

A recent Tax Tribunal case with an unusual appellant has started to hit the headlines:-

The case is **Bretten V HMRC (2013) UK FTT 189 (TC)**

The Taxpayer in this case was until very recently (he has now retired) a leading Tax QC giving Legal Opinions on many tax schemes.

In 2003, he created his own tax loss scheme using discounted securities (a type of loan note) and then attempted to manipulate the value to create a tax loss.

(He also committed a cardinal error that is taught to most Lawyers. Never represent yourself in Court!)

Not only was the case an embarrassing loss for Mr Bretten, QC but it is a useful guide to the Courts approach to this type of tax planning in the UK.

Mr Bretten's QC did not lose because he used a loophole that was shut down. Nor did he lose (as often claimed by Tax Barrister's, because of poor execution of documents (although he did miscalculate by one day the transfer of the loan notes!)

He lost because of a Principle or Doctrine of Statutory Interpretation first ruled on by the House of Lords – some 32 years ago. The Ramsay Doctrine set out in Ramsay Ltd v. Inland Revenue Commissioners, Eilbeck (Inspector of Taxes) v Rawling [1982] A.C. 300.

What is also significant is that Mr Bretten QC has written Legal Opinions confirming the viability of many complex tax avoidance schemes. So, this decision will undermine much more than his own tax planning!

If a leading Tax barrister did not really understand the state of the law in 2003. How can ordinary practitioners understand the state of play now, and the chances of success of current or former tax schemes and their own personal liability?

My seminar in Holborn, London on 22nd May analysed the situation and the law. Unlike other seminars, it resolved any uncertainty on tax schemes. I also looked forward to the future of tax planning.

If you have clients who are involved in tax schemes which have not been resolved, or want forward tax planning, please contact either Vicky or Beth.

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Partnership No: OC354457

3rd Floor, The Corn Exchange, Exchange Square, Manchester M4 3TR.

Tel: 0161 838 5616. Fax: 0161 838 5601. E-mail: info@stratax.co.uk