

made at a smooth text untrammelled by gender, below episcopal level.'

Pure Dale, especially the little flick at the end. He was a person who, over his immensely long, varied and productive professional life, defied pigeonholing. He liked to be noticed and appreciated, but was unaffected in his behaviour and as modest in his demands if they touched him personally as he was insistent if they touched the interests of anyone he had

taken under his wing. He never sought position, but over the years the attributes of position gravitated towards him: the knighthood, the benchership of his Inn, the honorary doctorate. After his 90th birthday, and in the aftermath of the Institute of Advanced Legal Studies including his portrait as the only outsider amongst its 50th Anniversary series of former directors, I asked him for a photograph to hang on my wall in the

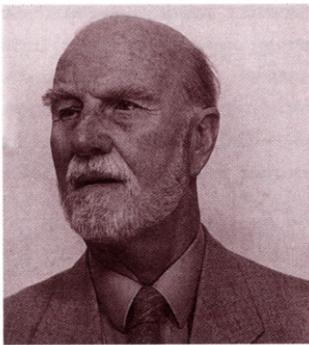
Foreign Office, in counter-position to the set of FO Legal Advisers; it seemed to give him as much pleasure as anything else that had happened. It was a privilege to have known him and worked with him. 

Sir Franklin Berman QC

Taxation

Inland Revenue concessions: convenience or just illegal?

by John Booth



John Booth

This article is a review of the anomaly of remissions of tax (called 'concessions'), made on the authority of the Commissioners of HM Treasury, and shows, from the most recently released papers in the Public Record Office, that this is widely misunderstood within the Treasury and Inland Revenue.

Although this source is restricted by the release of papers under the '30-year rule', the up-to-date House of Commons committee papers fill in much information for those missing years. However within both sources there is an absence of references to court judgments, or of comments from learned counsel or commentators, all drawing attention to many anomalies.

There is also the problem for appellants of the absence of any statutory appeals procedure from this 'secondary legislation', or of the need for the costs of appeals to be borne, for defendants and appellants alike, on a 'level playing field'.

It is hoped that these comments will help to extend this debate.

THE COMMISSIONERS OF HM TREASURY

What is meant by HM Treasury and what is the authority for its powers over the Inland Revenue department?

The statutory source is still of their 'authority, direction and control' (Inland Revenue Regulation Act 1890 (IRRA), s. 1(2)) over the Commissioners of Inland Revenue. It is this statute which distinguishes the Revenue from other departments that also practice 'extra-statutory concessions', the significance being that the Revenue department is that of taxation and specifically of any dispensing power which was ended by the *Bill of Rights* 1688:

'that levying Money for or to the use of the Crown, by Pretence of Prerogative, without Grant of Parliament ... is illegal' (Bill of Rights Act 1688, s. 1(4)).

It is of interest that only one reference was found to that Statute in Treasury papers up to 1960, but a note to the Home Office confirmed that:

'It is doubtful whether there is any authority under which the Treasury can grant an extra-statutory concession ... the Bill of Rights put an end to the Crown's dispensing power'. (PRO T233, F.1544, 27 April 1945)

This note also drew attention to the 1897 Report of the Committee of Public

Accounts (hereafter 'CPA') and the Treasury Minute of 31 December 1897 (1898 HC 2611, VIII, 147. Copy reproduced in J Booth, *Stand and Deliver*, Waterside Press (1998), Appendix A. 3 and discussed by the writer in *The Statutory Position of the Revenue Department* ((1999) 6 EFSL). The Treasury minute is also significant in that it is often inaccurately quoted in Treasury and Revenue memorandums, but it does contain whatever alleged authority exists for the Revenue to remit tax on the following grounds:

- (a) fixed principles affecting classes, and
- (b) on grounds of *equity or compassion*. (emphasis added)

In 1958 this minute was regarded by the Treasury as '*still the basis for our policy*'. (PRO T233/1598. HF 93/826/01, 11 June 1958), although the Revenue altered the grounds for remissions to 'poverty or other grounds' (1936), 'comparative hardship' (1970) and 'to meet cases of hardship', (IR 1, 1999). HM Customs and Excise did explain to the CPA, in 1966, their own continued use of 'grounds of compassion', to be without problems, from a quoted case (1966-67 HC 647-I, VIII, 687, q. 2590).

However in 1950 the ambiguities, for the Financial Secretary, were clear when he advised the Chancellor that:

'The doctrine of 'ESCs', or, less politely, deviating from the law ... always seems to me to be odd. But if we do it, I see no reason for concealing it.' (PRO T233/1097, memo 30 October 1950)

These ambiguities were endorsed, for the same CPA meeting, in a memo to Sir W Eady, who was advised that:

'Our dispensing power ... is one of the great mysteries of the British Constitution'. (PRO T233/1594)

However it was noted in the same Treasury review that the Revenue made concessions *'off their own bat'*.

A continuing ambiguity is that references to the Treasury imply a single statutory authority, although *Halsbury's Laws* are clear that 'The Treasury' means:

'The Lord High Treasurer for the time being, or the Commissioners for the time being of Her Majesty's Treasury'. (Vol. 8 (1974) para. 1165)

CONCESSIONS ANOMALY

This article is a review of the anomaly of remissions of tax (called 'concessions'), made on the authority of the Commissioners of HM Treasury, and shows, from the most recently released papers in the Public Record Office, that this is widely misunderstood within the Treasury and Inland Revenue.

These commissioners are the First Lord of the Treasury (the Prime Minister) and the Chancellor of the Exchequer; they do not include the Junior Lords of the Treasury, although all form a Treasury Board, which does not meet. There is, however, much correspondence which does not separate the two offices, but the subject did arise in 1959 in regard to the Chancellor's powers (over the Revenue), in a note by the Chairman of the Board of Inland Revenue, which concluded that:

'The Chancellor is responsible for revenue policy while the two revenue departments act as [a] "managerial arm" – the Inland Revenue being subject to Treasury "direction".'

The following manuscript note was added:

'This note uses the term 'Chancellor' and 'Treasury' as separate things. If it implies

that Treasury officials are responsible for taxation policy ... we could not agree. [The] Treasury in a statute means the Lords Commissioners – not their advisers in Whitehall.' (PRO IR 40/13386, PS 2590 23 February 1959)

This view conforms with *Halsbury's Laws* and places any decisions, in regard to remissions, firmly with the First Lord and the Chancellor. However the need to secure the approval of Parliament is still paramount, as Terry Davies MP called for in a Budget debate, which failed on a party line vote (63 HC Deb 6s 1983–84, cols. 1162–66).

A continuing problem is that the commissioners and junior lords are transient political appointees and are briefed by Treasury officials, who are themselves uncertain as to the statutory authority. This was demonstrated when a Chancellor asked:

'What is the authority for extra-statutory concessions? Customs tell me that this is a question for the Treasury.' (PRO T233/1592, 25 February 1938)

However, this could be overcome by appointing senior officials to be commissioners on the Treasury Board, in order to provide a continuum of statutory knowledge, and if the Board were to meet and report proposed remissions to Parliament for approval.

MINUTES: AN AUTHORITY OR DECEPTION?

Although the statutory authority for HM Treasury to authorise minutes, in regard to remissions, is ambiguous, the CPA has regularly identified that the origin stems from the Treasury. But is this correct? In 1982 it was stated to be:

'First expressed by the Treasury in 1897 [that] extra-statutory class concessions should be placed on a statutory footing at the earliest opportunity.' (1981–82 HC 339, para. 32)

This was endorsed by the Comptroller and Auditor General (the 'C & AG'), who confirmed the arrangement that:

'In 1897 the Inland Revenue Department are requested to furnish annually [to the C & AG] schedules of the amounts remitted ... so that he may report to Parliament any questionable use of the Board's dispensing power.' (1981–82 HC 76–IX, XV, paras. 56–59)

This, of course, only provided for Parliamentary approval after the event rather than for debate on a proposal beforehand, as Davies sought. But the authority stated is the Treasury Minute of 31 December 1897, and should be qualified because it was in response to the illegal waiving of duty due on the estate of the late Alexander III in 1894. The waiving of this estate duty was not, as has been claimed, the first extra-statutory concession. Indeed the CPA rebuked the Treasury over the unrecorded waiver, claiming that it was 'not only 'extra-statutory' but actually against the law', to which the Treasury responded that the *'dispensing power exercised is not in all respects satisfactory'* (1897 HC 196 (166), VIII, 5, Second Report, para. 17, and 1898 HC 261, VIII, 1, 148).

A fresh criterion was therefore established for dispensations, although the Treasury had been rebuked earlier for issuing dispensing minutes. In 1885, for instance, when the Treasury made allowances to the Commissioners of Income Tax (Minute, 3 November 1885), they were told by the CPA that:

'They are extra-statutory ... [and] they should be legalised by statutory authority'. (1884–85 HC 267, VII, 37)

This was done in the *Taxes Act 1891*, s. 2. But again, in 1887, the CPA told the Treasury, in regard to superannuation allowances, that:

'It is Parliament and not the Treasury which ought to decide ... [on] straining the law to meet exigencies ... the Treasury is usurping the functions of the Legislators.' (1888 HC 201, VII, 1, para. 48)

The Treasury responded by including the provision in the *Statute Law Revision Act 1887*, s.4. Despite this, the Parliamentary challenges continued, and in 1891 the Treasury responded that 'They [i.e. the First Lord and the Chancellor] do not claim to have the power of remitting', following which the exemptions were withdrawn (1894 HC 249, IX, 321, T.M. 15 December 1894).

Finally, on 24 March 1897, in giving evidence to the PCA, Sir EW Hamilton, the then Permanent Secretary to the Treasury, referred to the fact that the Treasury had no power of remitting the duty:

'The Treasury do not contend they have any power to remit taxation'. (1897 HC 314, VIII, 125, q. 393)

SINGLE AUTHORITY?

A continuing ambiguity is that references to the Treasury imply a single statutory authority, although Halsbury's Laws are clear that 'The Treasury' means:

'The Lord High Treasurer for the time being, or the Commissioners for the time being of Her Majesty's Treasury'. (Vol. 8 (1974) para. 1165)

These commissioners are the First Lord of the Treasury (the Prime Minister) and the Chancellor of the Exchequer; they do not include the Junior Lords of the Treasury, although all form a Treasury Board, which does not meet.

These admissions appear to show that neither HM Treasury nor the Departmental Treasury have had (historically) statutory authority to remit taxes. So on what authority did the Minute of 1897 emerge, for which authority is claimed by successive CPAs? The *Exchequer and Audit Department Act 1866* had continued the use of Royal Orders, which required Treasury minutes dispensing with an audit to be laid before Parliament and therefore those minutes had Parliamentary authority (PROT 29/606 at p. 620). Although the laying of minutes before Parliament was not continued, it is suggested that the Treasury Department regarded the 1866 Act (s. 14, 44) as an *enabling measure* to be filled in by Treasury minutes. However the 1866 Act did provide that, in regard to expenses for public service to be countersigned by the Lords Commissioners, the Treasury could dispense with the examination of certain accounts by the C & AG. Therefore, in regard to any historic precedents not tested in the courts, the present use of Treasury minutes to authorise remissions is suggested to be an assertion by the Treasury, to which the Lords Commissioners (without advice) and Parliament have acquiesced, and not a statutory authority.

Later, in 1979, concern over unauthorised remissions caused David Williams to conclude that:

'Most of the extra-statutory concessions are illegal. That ... [they] grow regularly ...

cannot but reflect on the quality of the executive that creates them and the polity that tolerates them'. ([1979] BTR, 137)

(It is interesting to note that 50 were published in 1950 and 294 in 1999).

David Williams' article was commended by Lord Edmund Davies ([1980] STC 10 at p. 35e, note 4).

The views of ministers, learned counsel and commentators on this anomaly can now be considered.

MINISTERS' EXPLANATIONS

These are unconvincing, reflecting Treasury briefs from authorities claimed to be 'unknown'. In 1944, in replying to Cdr Galbraith MP, the Chancellor stated concessions to be 'granted in virtue of the existence of a somewhat *indefinite dispensing power*' (emphasis added) and that they were given 'in wartime not in peacetime' (400 HC Deb 5s. 1943-44, cols. 2173-76). The latter statement was untrue, as a building-society-arranged concession had existed before 1887. In 1949 another Chancellor tried to explain a different legal basis as 'without any *particular legal authority*, but by the Inland Revenue under my authority' (466 HC Deb 5s. 1948-49, col. 2267) (emphasis added).

Another interpretation was given in 1976 by a minister of state, who said: 'Extra-statutory concessions ... (are) obviously always *in favour of the taxpayer* (emphasis added) (915 HC Deb 5s. 1975-76, col. 187).

This was also untrue, as shown by the building society concession, and later by the Parliamentary Commissioner for Administration, Case No C.389/90 (see *Stand and Deliver!* op. cit. at p. 202). But in 1984 the Chief Secretary to the Treasury gave another explanation for remissions, stating that:

'Both the Inland Revenue and Customs and Excise are charged statutorily with care and administration, and from that statutory power their authority ... is thought to derive.' (emphasis added) (63 HC Deb 6s. 1983-84, cols. 1162-1175)

The problem was that neither ministers nor the Treasury knew the authority or that it did not exist. The Revenue confused matters further by issuing a press release in 1987 to the effect that remissions were:

'A relaxation which gives to taxpayers a reduction in tax liability to which they are not entitled in law'. (Press release, 25 September 1987, and included in subsequent IR 1 booklets on concessions)

All of these explanations were made from briefs by the departmental Treasury when the legal authority was admitted to be unknown (PRO T233/1594). The amending clause, sought by Terry Davies, MP, in 1984, was therefore an important constitutional compromise in that Davies said:

'The point is not that the concessions may be wrong ... but that they should be given with the authority of the House of Commons'. (op. cit. 63 HC Deb 6s 1983-84)

What did others make of this controversy?

JUDGMENTS, LEARNED COUNSEL & COMMENTATORS

This section considers the courts' views on the statutory liability to tax, the position of concessions and the Revenue in relation to such concessions. It is of some concern that during the period from before 1887 until 1991, the Revenue had made arrangements and concessions with building societies for their mutual administrative convenience and admitted this to be the case. This distorted the statutory charging to tax of interest paid, to the disadvantage of all those savers with no tax liability, until it was stated to be illegal by the then Nolan J ([1987] STC 654 at p. 657) and discussed by the writer in 1998, 5 EFSL. This confirmed that the concessions were not restricted to wartime, nor were they necessarily in favour of taxpayers.

APPEALS

The prospects in regard to taxpayers seeking appeals against the Revenue's subsidiary legislation are grim.

Lord Cairns said as early as 1869:

'If the person sought to be taxed comes within the letter of the law he must be taxed'. ((1869) LR 4 HL 100)

To this Earl Loreburn added in 1915, where the letter of the law had been disregarded, that 'It can be done only in cases of necessity' ([1915] AC 1011).

These examples show that, from 1887, the Revenue had neither observed the law nor shown that their actions were necessary and continued to make secret arrangements, which remained unpublished until 1950. However in 1944 wartime concessions were published (Cmd 6559) and claimed to be 'in the administration of Revenue duties'. It was of course nothing of the sort and, with the omission of the pre-1939 remissions, led to the misleading impression that they were made on the sole authority of the Revenue and only in wartime. Yet Lord Scott had stated in 1944:

'No jurisdiction can, or ought to be given in matters of taxation to any system of extra-legal concessions'. ([1944] CA 1011)

Viscount Radcliffe LJ later commented scathingly, in 1964, that:

'I have never understood the procedures of extra-statutory concessions in the case of a body to whom at least the door of Parliament is opened every year for adjustments of the tax code'. ([1965] AC 402)

In 1966 Lord Upjohn had no time for the Revenue and illustrated the extension of the Revenue's policy of 'convenience', stating that:

'Realising the monstrous result of giving effect to the section [ITA 1952, s. 408 (2)] they have worked out what they consider to be an equitable way of operating it. I am quite unable to understand upon what principle they can properly do so'. ([1968] AC 483)

Later, Walton J in 1978 was both scathing and perplexed about the Revenue:

'I am totally unable to understand on what basis the Revenue are entitled to make extra-statutory concessions ... and why are some groups favoured as against others? [If] the Crown can remit ... at its own sweet will and pleasure ... we are back to the days of the Star Chamber ... The root of the evil is that it claims it has, in fact, the right to do so'. (STC 567 at p. 575)

This judgment also raised the question of the Revenue's entitlement to make concessions and carried a *per curiam*:

'Extra-statutory concessions would appear to be unconstitutional in as much as the Crown is claiming the power to dispense with the laws'.

But in 1979 Lord Wilberforce returned to the question and was clear that 'One should be taxed by law, and not untaxed by concession [which] lacks any legal

basis'. To this Lord Edmund Davies added:

'Despite the reliance placed on the TMA 1970 and the IRRA 1890 the fact is there exists no statutory support for the assessment procedure adopted in the present case'.

However, in 1987, some of the Revenue's powers were deemed to have been extended under the 'care and management' provisions of the *Taxes Management Act 1970* when, in a judicial review, it was held by McNeill J that:

'The extra-statutory concessions offered by the Revenue were lawful and were within the proper exercise of managerial discretion'. ([1987] STC 344)

One conclusion is obvious in that, because the original authority still rests with that given by HM Treasury, under the minute of 1897, and being subsidiary legislation if at all, an appeal has only been possible under a judicial review; thus the Revenue's 'managerial discretion' was based on an authority passed to the Revenue by the Treasury minute. It is therefore unhelpful that in another edition of *Halsbury's Laws* it is stated that:

'Such concessions are now accepted as being within the proper exercise of managerial discretion'. (Vol. 23, 4th ed. (1991), para. 31, at 32)

They are so accepted if Parliamentary sources, and the significance of subsidiary legislation impinging upon the Statutes, are ignored.

SUBSIDIARY LEGISLATION & SOME CONSEQUENCES

The contribution by the then Sir John Donaldson MR, in a 1984 judicial review case, has been decisive in underlining the problems created through secondary legislation for the Revenue and its taxpayers, inaccessible to the courts, and ignored by the Treasury and Revenue alike. Sir John made clear that:

'The UK has no written constitution, it is a convention of the highest importance that the legislature and judicature are separate and independent of one another'.

Turning to subordinate legislation he then said:

'It is the function of Parliament to legislate and legislation is necessarily in written form. It is the function of the courts to construe and interpret that legislation. It is for Parliament

to make the laws and for the courts to tell the nation, including members of both Houses of Parliament, what those laws mean.'

...
'Legislation by Order in Council, Statutory Instrument or other subordinate means is in a quite different category, not being Parliamentary legislation.'

Sir John also added, without apparent reference to the 1897 Minute, that:

NO LEGAL FORCE

...although the Revenue has contributed to blurring the parameters of their statutory authority, in regard to subsidiary legislation, and remissions in particular, their authority to remit, if at all, originates in the Treasury and Treasury minutes, which have not been challenged despite being without 'legal force or effect'.

'This subordinate legislation is subject to some degree of judicial control in the sense that it is within the province and authority of the courts to hold that particular examples are not authorised by statute, or as the case may be the common law, and so are without legal force or effect'. ([1984] 1 All ER 589 at p. 593)

The case in regard to the 1897 Minute therefore seems conclusive in that it has never come before the province and authority of the courts and must be without legal force or effect. Nevertheless concessions have been upheld by the CPA to have their origin in that minute, on which authority the Departmental Treasury and Revenue have continued to act. But in a judicial review case in 1982, in the judgments of Lords Diplock and Scarman the Revenue's position was outlined as being 'charged by statute with the care, management and collection' of inland revenues (TMA 1970, s. 1(1)). Exercising this function, it was claimed that the Revenue have:

'a wide managerial discretion as to the best means of obtaining ... the highest net return that is possible'.

But it was stated that 'there is no difference between the exercise of a managerial and administrative discretion' ([1982] AC 617).

The conundrum remains of the ending of dispensing power by the 1688 Bill of Rights, the remitting authority of the 1897 minute, and the 'authority,

direction and control' of the Revenue by the Treasury. There is also the long-standing administrative authority of Professor HWR Wade that:

'Public authorities should be compellable to perform their duties, as a matter of public interest, at the instance of any person genuinely concerned'. (Administrative Law, 6th ed., Oxford (1977), at p. 608)

Also in 1987 Professor Ganz noted that: 'Quasi-legal or non-legal rules ... may be nothing more than a sop to pressure groups'. (G Ganz, *Quasi-Legislation*, Sweet & Maxwell, (1987) at p. 105). The writer confirmed this to be the case regarding National Savings in *Stand and Deliver!*, op. cit. at p. 173.

In 1991 W Hinds also questioned the legality of Revenue concessions through the use of estoppel, (*Estopping the Taxman*, [1991] BTR at p. 191). This would include the Revenue's subsidiary legislation, also as statements of advice rulings and agreements, extra-statutory concessions and statements of practice. These:

'Could not be given legally binding force through the argument that reliance induced by official statements should estop the Revenue from acting in an inconsistent manner'.

Hinds also drew attention to Rowlatt J, who in 1924 had ruled that:

'The CIR had no power to bind the Crown by a general declaration of what the law is in particular circumstances beforehand'. (Liberty & Co Ltd v CIR, not reported, (1924) 12 TC at p. 639)

Hinds also noted that:

'[The] cornerstone of administrative law is the 'ultra vires' doctrine; an authority must show legal authority for its acts and if it acted beyond the limits of the powers its acts were legally ineffective'.

There were also shown to be other cornerstones of case law into which published concessions could not be made to fit, such as the statement that:

'[The] Income Tax was a tax imposed annually by Parliament and it would be wholly beyond the powers of the Revenue to make an agreement as to the collection in future years'.

and

'The Revenue could not agree in advance as to which basis was to be employed as this was a matter which must be determined annually [by Parliament].' ([1916] 1 Ch. 228)

It is now possible to consider the question of appeals.

APPEALS! WHAT APPEALS?

The question of redressing a taxpayer's grievance in regard to subsidiary legislation has had insufficient analysis, although Sir John Donaldson made it quite clear that subsidiary legislation is not Parliamentary legislation, and is without 'legal force or effect'. However remissions did exist, although W Armstrong wrote a Treasury paper in 1958 in which he considered that:

'It would be extremely dangerous and contrary to democratic principles (by giving to the executive) general discretion to dispense with the law'. (PRO T233/1598, 18 June 1958, para. 2)

If this is so, and with the inconsistent court rulings, how are appeals to be brought against the Revenue's remissions? The Revenue are of no help, stating in a paper on their 'Powers and Procedures' that the only consideration in regard to appeals was in the context of 'facts or the law', which was ignored in their comments on remissions (PRO T233/1598, 16 October 1956).

As it has been shown that arrangements and tax concessions have existed since 1887, it is surprising that no view at all existed in the Treasury or the Revenue in regard to appeals against subsidiary legislation. In 1980 J Alder showed that the avenue of a judicial review faced problems of locus standi or who can challenge the legality of a concession? Alder's view was that:

'A person who falls within a published concession can insist on it being applied to him [sic] by means of an application for a declaration since his liability to pay tax is directly affected'. ([1980] NLJ 181)

But the difficulties are compounded, as judgments showed. For example, the then Lord Denning MR considered in 1980 that 'The applicant must have sufficient interest in the matter' ([1980] STC 261 at p. 273) and quoted the Attorney-General of the Gambia in 1961 that it should be a person with a genuine grievance:

'Because something has been done or omitted to be done contrary to what the law requires'. ([1961] AC 617 at p.634)

Lord Denning extended his argument further, supposing that:

'[If] a government department ... is transgressing the law ... which offends or injures thousands of HM's subjects, then anyone of those offended ... can draw it to the attention of the Courts of law and seek to have the law enforced'.

Also, in regard to an amnesty to tax, as an unlawful agreement with the Revenue, Lord Denning noted that:

'Counsel for the Crown invited us to proceed on the assumption that the Revenue acted unlawfully because they had no dispensing power'. (op. cit. at p. 275)

From this standpoint, reference was drawn to Lord Denning's concept of 'legitimate expectations' ([1969] 2 Ch 149 at p. 170), and in 1980 to Lord Bingham LJ, noting 'the valuable developing doctrine of legitimate expectations' ([1990] 1 All ER 91 at p. 110). Hinds also noted that legitimate expectations had created something like:

'A public law right, which the courts will protect by judicial review'. (op. cit. at p. 198)

But although estoppel has been undermined by the principles of fairness and legitimate expectations, (in 1991) the taxpayer had not succeeded in any of the cases discussed. Also, in 1999, the Revenue stated, of the subsidiary employment regulations, that:

'The only way in which a taxpayer can properly contest directions under (employment) regulations ... is by way of judicial review'. ([1999] STC 550 CA)

AMBIGUOUS AUTHORITY

Although the statutory authority for HM Treasury to authorise minutes, in regard to remissions, is ambiguous, the CPA has regularly identified that the origin stems from the Treasury. But is this correct?

Fortunately the Court of Appeal rejected the Revenue's advice and criticised them for not providing a right of appeal against (subsidiary) regulations; a re-hearing was allowed, without leave for the Revenue to appeal – a decision discussed by the writer in the *Tax Practitioner*, November 1999.

The consequences for aggrieved taxpayers seeking to use a judicial review were illustrated by R Bartlett in 1987. He pointed out that the cost of a case going

to the House of Lords at that time was some £50,000 and that taxpayers had succeeded in only five out of 26 cases since 1973 ([1981] BTR at p. 10). The prospects in regard to taxpayers seeking appeals against the Revenue's subsidiary legislation are grim.

CONCLUSIONS

The thrust of this article has been to show that, although the Revenue has contributed to blurring the parameters of their statutory authority, in regard to subsidiary legislation, and remissions in particular, their authority to remit, if at all, originates in the Treasury and Treasury minutes, which have not been challenged despite being without 'legal force

or effect'. The Revenue, acting upon their authority of 'care and management', have obfuscated the authority for remissions as 'concessions', which reflects poorly on all parties. Perhaps the courts should be empowered to consider subsidiary Revenue legislation when determining the consequences of, and explaining to all, what the statutes mean? With 111 employment regulations, 294 concessions, and 304 statements of practice in 2000, that would be no mean task.

Finally, in view of the court costs of taxpayers' appeals, and because the Revenue uses the Exchequer's funds to defend and prosecute its own cases, the taxpayer, as appellant or defendant,

should have equal access to this funding. Such a measure would create a new, more democratic, and more level playing field. 

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