



[2013] UKUT 051 (TCC)
Appeal number: FTC/37/2012

Income tax – charge on retirement benefits scheme administrator under s591C ICTA 88 on cessation of approval of scheme – whether assessments raised in respect of correct year of assessment – whether raised in the name of correct person

**IN THE UPPER TRIBUNAL
TAX AND CHANCERY CHAMBER**

John Mander Pension Trustees Limited

Appellant

- and -

**The Commissioners for Her Majesty's Revenue and
Customs**

Respondents

Tribunal: Mr Justice Vos

Sitting in public in London on 16th January 2013

Mr Laurent Sykes, instructed by Ansons, for the Appellant, John Mander Pension Scheme Trustees Limited

Mr Akash Nawbatt, instructed by the General Counsel and Solicitor to HM Revenue and Customs, for the Respondents, the Commissioners of Her Majesty's Revenue and Customs

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DECISION

Introduction

1. This is an appeal by John Mander Pension Scheme Trustees Limited (“JMPSTL” or the “Appellant”) from a decision of the first-tier tribunal (tax) (Tribunal Judge Barbara Mosedale and Mr N Collard) (the “FTT”) released on 28th October 2011 (the “Decision”) dismissing JMPSTL’s appeal against two assessments dated 27th July 2000 (the “2000 Assessment”) and 22nd January 2007 (the “2007 Assessment”) made by the Commissioners for Her Majesty’s Revenue and Customs (“HMRC”) each in the sum of £475,200 (together the “Assessments”) under section 591C of the Income and Corporation Taxes Act 1988 (“ICTA”). References to section numbers in this judgment are to ICTA, unless otherwise expressly stated.
2. The appeal raises two quite straightforward issues namely:-
 - i) Did the tax charged under the 2000 and 2007 Assessments arise in the 2000/2001 or 1996/1997 tax year?
 - ii) Is JMPTL, the current trustee of the John Mander Limited Directors Pension Scheme (the “John Mander Scheme”), liable to pay the tax due under the 2000 Assessment in its capacity as the present administrator of the John Mander Scheme?
3. It is common ground that if the appeal were to fail on the first issue as to the correct year of account, the second issue would not matter to this appeal, since if the 2007 Assessment related to the 2000/2001 tax year, then it is acknowledged to be validly raised against JMPSTL. I shall need, however, to deal with both issues, whatever the outcome of the first, because it has been agreed that this is a lead case upon which other cases will depend.
4. In the course of argument, the parties have made some submissions concerning the background to and the propriety of the dealings of the John Mander Scheme and the reasons why HMRC withdrew its approval. As it seems to me, these issues have no bearing on the issues of statutory construction that have been raised by the appeal, and I do not intend to say any more about them.

Chronological background

5. On 24th September 1987, the John Mander Scheme was created by a trust deed and was approved by HMRC. The original trustees were Mr John Mander (“Mr Mander”), Mrs Elizabeth Mander (“Mrs Mander”), and Mr Alexander Jackson, who was the HMRC approved pensioner trustee (“Mr Jackson”).
6. On 9th September 1994, DJT Trustees Limited (“DJT”) replaced Mr Jackson as the approved pensioner trustee of the John Mander Scheme.
7. On 5th November 1996:-
 - i) Mr and Mrs Mander resigned as trustees of the John Mander Scheme;
 - ii) Louvre Trust Company Limited was appointed as a trustee alongside DJT;

- iii) The funds of the John Mander Scheme (£1,188,000) were transferred to the Vesuvius Shipping Limited Pension Scheme, set up by Vesuvius Shipping Limited, a company wholly owned and controlled by Mr and Mrs Mander.
8. On 18th March 1997, DJT resigned as a trustee of the John Mander Scheme.
9. On 20th June 1997:-
 - i) Louvre Trust Company Limited resigned as a trustee of the John Mander Scheme.
 - ii) Mrs Mander and TM Trustees Limited, a new independent pensioner trustee, were appointed as trustees of the John Mander Scheme.
10. On 9th December 1997, HMRC wrote to each of Mrs Mander and TM Trustees Limited as trustees of the John Mander Scheme indicating the reasons why they proposed to give notice under section 591B(1) of the withdrawal of HMRC's approval for the John Mander Scheme with effect from 5th November 1996.
11. On 26th February 1998:-
 - i) Mrs Mander resigned as a trustee of the John Mander Scheme; and
 - ii) Louvre Trustees Limited was appointed as a trustee of the John Mander Scheme.
12. On 19th April 2000, HMRC wrote to each of "*The Louvre Trust Company*" and TM Trustees Limited in the following terms:

"For the reasons given in my letter of 3 March to Mr Warman, and in earlier letters, it is the opinion of [HMRC] that the facts concerning the administration of the [John Mander Scheme] no longer warrant the continuation of its approval under Section 591 [of ICTA]. [HMRC in exercise of its powers under Section 591B [of ICTA] has therefore decided to give notice that approval has been withdrawn with effect from 5 November 1996. ...

From the date of withdrawal of approval the position will be as follows:-

(a) tax will be chargeable under Section 591C [of ICTA] at the rate of 40% on the value of the scheme assets on the day before cessation of approval ..."
13. On 27th July 2000, HMRC issued the 2000 Assessment in the sum of £475,200 addressed to Louvre Trustees Limited in Guernsey "*As administrator of the [John Mander Scheme]*". At the time, the trustees were TM Trustees Limited and Louvre Trustees Limited.
14. On 31st July 2000, Louvre Trustees Limited appealed against the 2000 Assessment.
15. On 11th April 2001, Sullivan J (as he then was) dismissed Mr Mander's application for judicial review of HMRC's decision to withdraw approval for the John Mander Scheme.

16. On 1st November 2001, Louvre Trustees Limited resigned as a trustee of the John Mander Scheme.
17. On 12th March 2002, JMPSTL was appointed as a trustee of the John Mander Scheme.
18. On 22nd January 2007, HMRC issued the 2007 Assessment in the sum of £475,200 addressed to JMPSTL and TM Trustees Limited “As administrator of the John Mander Ltd Directors Pen Scheme”. JMPSTL and TM Trustees Limited were the current trustees at that time.
19. On 13th February 2007, JMPSTL appealed against the 2007 Assessment.

Relevant legislation

20. Section 591A(2) of ICTA provides the first of three ways in which HMRC approval to a retirements benefit scheme (granted under sections 590-1) can be withdrawn:-

“Any retirement benefits scheme approved by the Board by virtue of section 591 before the day on which the section 591 regulations come into force shall cease to be approved by virtue of that section at the end of the period of 36 months beginning with that day if at the end of that period the scheme

—

(a) contains a provision of a prohibited description, or

(b) does not contain a provision of a required description,

unless the description of provision is specified in regulations made by the Board for the purposes of this subsection”.

21. Section 591B of ICTA provides for the second and third ways in which HMRC approval to a retirements benefit scheme can be withdrawn as follows:-

“(1) If in the opinion of the Board the facts concerning any approved scheme or its administration cease to warrant the continuance of their approval of the scheme, they may at any time by notice to the administrator, withdraw their approval on such grounds, and from such date (which shall not be earlier than the date when those facts first ceased to warrant the continuance of their approval....), as may be specified in the notice.

(2) Where an alteration has been made in a retirement benefits scheme, no approval given by the Board as regards the scheme before the alteration shall apply after the date of the alteration unless-

(a) the alteration has been approved by the Board, or

(b) the scheme is of a class specified in regulations made by the Board for the purposes of this paragraph and the alteration is of a description so specified in relation to schemes of that class”.

22. Section 591C of ICTA provided as follows:-

“(1) Where an approval of a scheme to which this section applies ceases to have effect..., tax shall be charged in accordance with this section.

(2) The tax shall be charged under Case VI of Schedule D at the rate of 40 per cent on an amount equal to the value of the assets which immediately before the date of the cessation of the approval of the scheme are held for the purposes of the scheme (taking that value as it stands immediately before that date).

(3) Subject to section 591D(4), the person liable for the tax shall be the administrator of the scheme.

(4) This section applies to a retirement benefits scheme in respect of which one or more of the conditions set out below is satisfied.

(5) The first condition is satisfied in respect of a scheme if, immediately before the date of the cessation of the approval of the scheme, the number of individuals who are members of the scheme is less than twelve.

(6) The second condition is satisfied in respect of a scheme if at any time within the period of one year ending with the date of the cessation of the approval of the scheme, a person who is or has been a controlling director of a company which has contributed to the scheme is a member of the scheme.

(6A) The third condition is satisfied in respect of a scheme if –

(a) at any time within the period of three years ending with the date of the cessation of the approval of the scheme, the scheme has received a transfer value in respect of any person; ...”

Section 591D provides the following supplementary provisions:-

“(7) The reference in section 591C(1) to an approval of a scheme ceasing to have effect is a reference to –

(a) the scheme ceasing to be an approved scheme by virtue of section 591(A)(2);

(b) the approval of the scheme being withdrawn under section 591B(1); or

(c) the approval of the scheme no longer applying by virtue of section 591B(2);

and any reference in section 591C to the date of the cessation of the approval of the scheme shall be construed accordingly”.

23. Section 606 of ICTA provided as follows in relation to the default of administrators:-

“(1) This section applies in relation to a retirement benefits scheme if at any time –

(a) there is no administrator of the scheme, or

(b) the person who is, or all of the persons who are, the administrator of the scheme cannot be traced, or

(c) the person who is, or all of the persons who are, the administrator of the scheme is or are in default for the purposes of this section.

(2) If the scheme is a trust scheme, then –

(a) if subsection (1) ... (c) above applies and at the time in question the condition mentioned in subsection (3) below is fulfilled, the trustee or trustees shall at that time be ... liable for any tax due from the administrator in the administrator's capacity as such (whenever falling due);

(b) if ... subsection 1 ... (c) above applies and at the time in question the condition mentioned in subsection (3) below is not fulfilled, the employer shall at that time be so ... liable; ...

(3) The condition is that there is at least one trustee of the scheme who –

(a) can be traced,

(b) is resident in the United Kingdom, and

(c) is not in default for the purposes of this section.

...

Where at any time –

(a) paragraph (b) or (c) of subsection (1) above applies in relation to a scheme, and

(b) a person is by virtue of this section ... liable for any tax, in relation to the scheme,

then at that time the person or persons mentioned in paragraph (b) or (as the case may be) paragraph (c) of subsection (1) above shall not, by reason only of being the administrator of the scheme, be ... liable for that tax.

...

(11) A person is in default for the purposes of this section if –

(a)

(b) he has failed to pay any tax due from him by virtue of this Chapter, and ... the Board consider the failure to be of a serious nature”.

24. Section 606A of ICTA provides for recourse to scheme members in the event that the employer fails to pay the tax due under section 606. The precise terms of section 606A are not relevant to this decision.

25. Section 611AA of ICTA defines “*the administrator*” as follows:

“(1) In this Chapter references to the administrator, in relation to a retirement benefits scheme, are to the person who is, or the persons who are, for the time being the administrator of the scheme by virtue of the following provisions of this section.

(2) Subject to subsection (7) below, where –

(a) the scheme is a trust scheme, and

(b) at any time the trustee, or any of the trustees, is or are resident in the United Kingdom,

the administrator of the scheme at that time shall be the trustee or trustees of the scheme.

...

(9) In this section –

(a)

(b) references to the trustee or trustees, in relation to a trust scheme and to a particular time, are to the person who is the trustee, or the persons who are the trustees, of the scheme at that time; ...”

26. Section 658A of ICTA provided as follows:-

“(1) Tax charged under Chapter I or IV of this Part on the administrator of a scheme –

(a) shall be treated as charged on every relevant person and be assessable by the Board in the name of the administrator of the scheme, but

(b) shall not be assessable on any relevant person who, at the time of the assessment, is no longer either the administrator of the scheme or included in the persons who are the administrator of the scheme.

(2) For the purposes of subsection (1) above a person is a relevant person in relation to any charge to tax on the administrator of a scheme if he is a person who at the time when the charge is treated as arising or any subsequent time is, or is included in the persons who are, the administrator of the scheme.

.....

(4) In this section “administrator”, in relation to a scheme, means the person who is –

(a) *the administrator of the scheme within the meaning given by section 611AA; or*

(b) *the scheme administrator, as defined in section 630*".

27. "Notice" is defined in section 832(1) of ICTA as meaning "*notice in writing....*".

28. Section 61 of the Finance Act 1995, which introduced sections 591C and 591D of ICTA provided as follows:-

"This section shall apply in relation to any approval of a retirement benefits scheme which ceases to have effect on or after 2nd November 1994 other than an approval ceasing to have effect by virtue of a notice given before that day under section 591B(1) of [ICTA]".

The shape of the appeal

29. I should say by way of introduction to my treatment of the issues under appeal that counsel for the Appellant, Mr Laurent Sykes, has submitted two lengthy written arguments (the first running to 55 pages and the second of 12 pages in reply) in support of the appeal. The written documents are in no sense 'skeletons'. Mr Sykes submits that he needed to do this because he asked for a hearing time longer than 1 day, but was refused it. I can well understand why a longer hearing was refused, and, as matters turned out, the argument was concluded comfortably before 4pm in less than one day.

30. Despite this, Mr Sykes complained that HMRC's counsel, Mr Akash Nawbatt, had not dealt in his skeleton with each aspect of each argument he (Mr Sykes) had raised (which I think he had in fact done). Mr Sykes then went on to intimate that this Tribunal was obliged to deal in turn and specifically with each of the many, sometimes peripheral, arguments he had raised. I would like to make it clear that the Tribunal has no such obligation. Mr Sykes's written argument was lengthy and discursive, and sometimes repetitive. It is the Upper Tribunal's duty on an appeal to deal carefully with the substantive points made in support of the attack made on the FTT's Decision, not to follow the Appellant's skeleton through dealing seriatim with the points made.

31. More substantively, Mr Sykes relied in both parts of his appeal on the distinction between the charge to tax and the assessment of tax, which was described by Lord Dunedin in Whitney v. IRC 10 TC 88 at page 110 as follows:-

"... there are three stages in the imposition of a tax: there is the declaration of liability, that is the part of the statute which determines what persons in respect of what property are liable. Next, there is the assessment. Liability does not depend on assessment. That, ex hypothesi, has already been fixed. But assessment particularises the exact sum which a person liable has to pay. Lastly, come the methods of recovery, if the person taxed does not voluntarily pay".

I have borne this passage closely in mind in dealing with this appeal.

Issue 1: The arguments on the correct year of account

32. It is common ground that:-
- i) The 2000 and 2007 Assessments were in respect of the tax year 2000/2001;
 - ii) If the tax charge under section 591C arose in the tax year 1996/1997, as the Appellant contends, then the 2000 and 2007 Assessments were in respect of the wrong tax year, and no tax was payable under them.
33. The Appellant's submission is that the tax charge on withdrawal of approval arises in the scintilla temporis "*immediately before the date of the cessation of approval*" (see the use of those words in section 591C(2)). In the alternative, the Appellant says that the charge to tax arose when the approval of the scheme "*ceased to have effect*" in accordance with section 591C(1).
34. The FTT held that the charging section was in fact section 591C(1) rather than section 591C(2), and that the answer to the issue it had to decide was in section 591D(7)(b), which provides that the reference in section 591C(1) to an approval of a scheme ceasing to have effect was to "*the approval of the scheme being withdrawn under section 591B(1)*".
35. Mr Sykes submitted that section 591D(7)(b) was ambiguous because the words "*the approval of the scheme being withdrawn under section 591B(1)*" could refer either to the act of withdrawal by HMRC notice or the date on which the withdrawal was expressed to take effect. He submitted that that ambiguity should be resolved so as to hold that the words referred to the date on which the withdrawal was expressed to take effect, because of a large number of contextual and related factors. He accepted, however, that, if in fact there was no ambiguity, the clear words of the statute must prevail, so that all the contextual and other arguments he had advanced would come to nought.
36. Mr Sykes also submitted that the final words in section 591D(7) militate in favour of his construction, because they show that any reference to the words "*the date of the cessation of the approval of the scheme*" in section 591C must be construed to mean the same as the words in section 591D(7)(b). Since those words are used in section 591C(2)(5)(6) and (6A), where they must mean the actual date on which the cessation of approval takes effect, the terms of section 591D(7)(b) must also be taken to be referring to that same date.
37. Mr Sykes submitted that the terms of section 61(3) of the Finance Act 1995, which introduced the charging provision into ICTA, assist his argument because they clearly distinguish between the date of a notice of withdrawal of approval under section 591B(1) and the date upon which the approval of a scheme ceases to have effect. In addition, he placed great reliance on the effect of HMRC's construction, which he said would allow it to impose tax any number of years after the events that gave rise to the withdrawal of approval.
38. The FTT decided this issue in a carefully reasoned section of its Decision between paragraphs 112 and 142. I shall not set out that reasoning here.

Discussion on issue 1

39. As it seems to me the proper construction of sections 591C and 591D(7) is not difficult. Section 591C(1) imposes the tax charge since it says expressly “[w]here an approval of a scheme ... ceases to have effect ... ***tax shall be charged*** in accordance with this section” (emphasis added). Section 591C(2) tells the reader the amount of the tax charge, which is “40 per cent on an amount equal to ...”. The words which follow define the sum upon which the 40% charge is levied. They define that sum as “the value of the assets which immediately before the date of the cessation of the approval of the scheme are held for the purposes of the scheme”. The inclusion in that part of section 591C(2) of the words “the date of the cessation of the approval of the scheme” (the words in the last part of section 591D(7)) has nothing to do with the imposition of the charge, only with defining its amount.
40. It is equally clear in my judgment that the words in section 591D(7)(b) namely: “the approval of the scheme being withdrawn under section 591B(1)”, are not ambiguous. They would be ambiguous if they comprised only “the approval of the scheme being withdrawn” without the last words: “under section 591B(1)”. The reference to “the approval of the scheme being withdrawn” could surely, just as Mr Sykes accepts, refer either to the act of withdrawal of the approval by HMRC notice or the date on which the withdrawal was expressed to take effect. But once the draftsman has added the words “under section 591B(1)”, he forces the reader back to section 591B(1) which clearly provides that HMRC “may at any time by notice to the administrator, withdraw their approval ...”. That formulation is clearly referring to the act of withdrawal rather than the date on which such withdrawal is expressed to take effect.
41. The problem then turns to the true meaning of the last words in section 591D(7), namely: “and any reference in section 591C to the date of the cessation of the approval of the scheme shall be construed accordingly”.
42. It must first be noted that the words “the date of the cessation of the approval of the scheme” are used four times in section 591C, so their meaning in section 591C(2) would normally be expected to be the same as their meaning in sections 591C(5), (6) and (6A). Moreover, it must also be understood that there are three ways in which a withdrawal of approval can occur under sections 591A(2) and 591B(1) and (2). It is only if the second method is operative (under section 591B(1)) that there can ever be a disparity between the date on which notice is given of the withdrawal of approval and the date on which that notice takes effect. The other two methods of withdrawal under sections 591A(2) and 591C(2) operate automatically.
43. At first sight, I thought that these final words in section 591D(7) were problematic, because the words “shall be construed accordingly” would seem to point to “the date of the cessation of the approval of the scheme” being the same date as the date already identified in each of subsections 591D(7)(a)(b) and (c). And, of course, in the case of sections 591D(7)(a) and (c), it will be. But for subsection 591D(7)(b) that would make no sense, since that subsection has already made it abundantly clear that, for a withdrawal by notice, the approval ceases to have effect under section 591C(1) when the notice is served under section 591B(1). For that reason, I agree with paragraph 132 of the FTT Decision that the words “construed accordingly” must mean, in respect of subsection 591D(7)(b) at least, construed in accordance with section 591B(1). Section 591B(1) includes reference both to the

withdrawal of approval taking place by the service of the notice, and to the date on which the withdrawal takes effect which is to be specified in the notice. Therefore, in relation to a section 591B(1) withdrawal by notice, the “*reference in section 591C to the date of the cessation of the approval of the scheme*” must be taken to be a reference to the latter date in section 591B(1) namely the date on which the withdrawal of approval takes effect. That makes sense when one looks at the other usages of the words “*the date of the cessation of the approval of the scheme*” in sections 591C(5),(6) and (6A) to which I have already referred. In those sections, the words must also refer to the date on which the withdrawal of approval actually takes effect. There is no difficulty in relation to withdrawals of approval taking effect under sections 591A(2) and 591B(2), since the words “*the date of the cessation of the approval of the scheme*” in section 591C plainly refer to the date on which the automatic withdrawals occur under sections 591A(2) and 591B(2). Therefore the words “*construed accordingly*” at the end of section 591D(7) are pointing once again to those sections 591A(2) and 591B(2).

44. Mr Sykes’s arguments on section 61(3) of the Finance Act 1995 do not assist the Appellant either. That section is simply dealing with transitional application. It makes clear that there is or may be a difference between the date of the notice withdrawing approval under section 591B(1) and the date on which such notice takes effect, but that much is anyway clear from section 591B(1) itself.
45. For these reasons, I find myself in agreement with the FTT and the reasons it gave in its Decision.

Issue 2: The arguments on whether later appointed trustees are liable for tax under an earlier assessment served on the then current administrator

46. JMPSTL was not appointed a trustee of the John Mander Scheme until 12th March 2002, nearly two years after the 2000 Assessment, yet HMRC contends that, on the proper construction of section 658A, it is liable for tax under the 2000 Assessment.
47. Mr Sykes’s argument on this point was attractively simple. First, he pointed to the difference between the charge to tax and the assessment, which I have already referred to. Secondly, he analysed section 658A(1)(a) by saying that it provided for:-
 - i) A tax charge on every relevant person, which he accepted included later appointed trustees under section 658A(2); and
 - ii) An assessment “*in the name of the administrator of the scheme*”.
48. Mr Sykes then analysed section 658A(1)(b) as simply preventing an assessment on a relevant person who was not at the time of the assessment in post as the administrator.
49. By reference to other statutes, Mr Sykes showed that the words “*in the name of*” were about the capacity in which the assessment was being raised, since those serving as administrator might have personal tax liabilities or tax liabilities as administrators of other schemes. He submitted, in conclusion, therefore, that there was nothing in section 658A that allowed HMRC to serve an assessment on the relevant persons currently in post as administrator, and then to make relevant persons later serving as administrator liable on that earlier assessment. If section

658A(1) had wanted to allow that to happen, it would have needed to have said that every relevant person later serving as administrator would be bound by that assessment, and such words are just not there.

50. The FTT dealt with this argument in paragraphs 62 to 110 of its Decision. It decided that the words “*in the name of*” in section 658A(1)(a) implied that a single assessment was sufficient to assess other relevant persons (paragraph 87), and said that that interpretation made section 658A consistent with the scheme used elsewhere in the Taxes Acts for making a new trustee liable for the tax payable by the trust. Joint and several liability of relevant persons was imposed by the words “*shall be treated as charged on every relevant person*” in section 658A(1)(a) (paragraph 90). Mr Sykes contends that this is to confuse the charge and the assessment.

Discussion on Issue 2

51. Once again, I start with the words of section 658A that are to be construed. The words of section 658A(1)(a) are crucial, because there is no difficulty in the meaning of either sections 658A(1)(b) or 658A(2). Section 658A(1)(b) prevents an assessment on a relevant person who is not in post at the time of the assessment. And section 658A(2) imposes the charge on persons who were serving as administrator when the charge arose or who later serve as administrator at any subsequent time. One must be careful, however, not to think that section 658A(2) is referring to the assessment; it is not. It refers only to the charge.
52. Section 658A(1)(a) then says that tax charged on the administrator “*shall be treated as charged on every relevant person and be assessable by the Board in the name of the administrator of the scheme*”. It is tempting to read the subsection disjunctively as if it were making two provisions: (i) tax charged on the administrator “*shall be treated as charged on every relevant person*” and (ii) tax charged on the administrator shall “*be assessable by the Board in the name of the administrator of the scheme*”. This would, in my judgment, be misleading. Section 658A(1)(a) is a single provision about the tax charged on the administrator. It is making clear that the tax that is charged on the administrator is to be treated as “*charged on every relevant person*” (which includes by section 658A(2) those subsequently appointed), and that that tax shall “*be assessable by the Board in the name of the administrator of the scheme*”. There is, therefore, no need for the subsection to say expressly that every relevant person will be bound by that assessment, because section 658A(1)(a) itself has made clear that an assessment in the name of the administrator is the way in which the charge on every relevant person is to be levied.
53. In my judgment, this construction avoids the need for the lengthy analysis of other provisions in the Taxes Acts that provide for new trustees to be liable under assessments raised against earlier trustees, though these regimes obviously make it far more likely that the construction I have indicated is correct. It is also not necessary to look in detail at the complex provisions of sections 606 and 606A providing for the waterfall of liability to the employer and thence to scheme members in the event of defaults by the administrator and then the employer. But when these provisions are properly analysed, as the FTT concluded, they point clearly to the correctness of the construction that I take to be clear from the words used in the section itself.

54. I agree, therefore, with the reasoning of the FTT, but would add that the words “*in the name of the administrator*” certainly do import the capacity in which the assessment is to be made. They do not, perhaps, by themselves mean that every relevant person is bound by the assessment, but that is the effect of section 658A(1) and (2) read as a whole.
55. I agree also with the eccentric effects of the Appellant’s construction pointed out by the FTT in paragraphs 97 and 98 of its Decision. There is no reason on earth why the legislation should be read as meaning that HMRC was unable to seek the tax from the trustees in post as administrator at the time when the withdrawal notice was served, if they had chosen to resign before the assessment was served. The suggestion that HMRC must issue repeated assessments on the trustees serving as the current administrator however often they change is a construction that would be unwieldy and often unworkable. Ultimately it might even lead to the time limits operating to prevent collection of the tax at all.
56. Mr Sykes raised a subsidiary point for which the Appellant had neither sought nor obtained permission to appeal, namely that the 2000 Assessment was invalid because it was addressed only to Louvre Trustees Limited and not to the second trustee serving as administrator at the time, namely TM Trustees Limited. It seems to me that the simple answer to this point is that the assessment must be “*in the name of the administrator of the scheme*”, which it was. It was addressed to Louvre Trustees Limited “*As administrator of the [John Mander Scheme]*”. I can see no reason why both trustees serving as administrator at the time had to be named. The statute does not require it.

Conclusions

57. For the reasons I have tried shortly to summarise, I agree with the Decision of the FTT on both the points under appeal.
- i) The tax charged under the 2000 and 2007 Assessments arose in the 2000/2001 tax year; and
 - ii) JMPTL, the current trustee of the John Mander Scheme, is liable to pay the tax due under the 2000 Assessment in its capacity as the present administrator of the John Mander Scheme.
58. The appeal will therefore be dismissed.

TRIBUNAL JUDGE: The Hon Mr Justice Vos

RELEASE DATE: 28 January 2013