

IN THE HIGH COURT OF JUSTICE

CHANCERY DIVISION

ROBERT GIRVAN (HMIT)

Appellant

- v -

ORANGE PERSONAL COMMUNICATIONS SERVICES LIMITED

Respondent

Mr Launcelot Henderson QC, Counsel, (instructed by Inland Revenue Solicitor's Office) appeared on behalf of the Appellant

Mr David Goldberg QC, Counsel, (instructed by Messrs Linklaters & Paines) appeared on behalf of the Respondent

Hearing: 2 April 1998

Judgment: 3 April 1998

JUDGMENT

MR JUSTICE NEUBERGER:

This is an appeal by the Inspector of Taxes against a decision of two Special Commissioners (Mr Paul De Voil and Dr A N Brice) given on 30th September and reported as [1997] STC (SCD) 307. The short question raised by the appeal is whether certain arrangements entered into between the respondent, Orange Personnel Communications Services Limited ("Orange") and Barclays Bank plc ("the Bank") between June 1990 and January 1991 were effective to prevent the interest on two deposit accounts ("the deposit accounts") which Orange had opened with the Bank on 12th March 1990 from being taxable in the hands of Orange as "income arising" within the meaning of Sections 64 and 270(1) of the Income and Corporation Taxes Act 1988 ("the 1988 act") until the deposits accounts were closed on 18th December 1992

THE FACTS

On 12th March 1990. Orange opened the deposit accounts. one of which was a

Business Premium Account, and the other of which was a High Interest Business Account, on the Bank's standard terms and conditions. These terms and conditions included a provision that interest was to be paid quarterly in arrear.

Before the quarter's interest due in June 1990 was paid, Orange proposed an agreement in a telephone conversation, confirmed in a letter of 13th June 1990, asking the bank "to roll up the deposit interest due to ourselves" on the basis that this is what Orange's tax consultants had "advised...as part of our normal tax planning procedures". On 22nd June 1990, the Bank wrote agreeing to this proposal, on the basis that the arrangement "may not continue for more than 12 months" and going on to say that:

"Accordingly, a note has been made for all accumulated interest to be credited to your accounts by the March 1991 interest date at the latest. Clearly, if it becomes your intention to take the benefit of the accumulated interest prior to that date, then please instruct us. Upon receipt of such instruction, we will arrange for the accumulated interest to be passed in either June [which should probably be September] or December as appropriate. The arrangement has been made in such a way that despite the non-passing of interest on the due dates, the full benefit of compounding will be enjoyed by the Company."

It is common ground that the effect of the arrangement was that the quarterly interest to Orange under the Bank's standard terms and conditions would not be credited to Orange's account, but would be compounded and paid in March 1991 (under the first arrangements or January 1993 (under the second arrangement) unless Orange asked for payment to be made earlier.

There was a third exchange of correspondence between Orange and the Bank between November 1990 and January 1991, which resulted in a further amendment to the agreed arrangements. Instead of the compound interest being payable by the Bank to Orange in January 1993 or, if earlier, when demanded by Orange, payment was to be made in January 1993 or, if earlier, when the relevant deposit account was closed and the balance in it withdrawn. The Special commissioners took the view that these three sets of arrangements between June 1990 and January 1991 were all variations on much the same theme. In particular, on the evidence before them, if orange had actually asked for payment of the compounded interest before January 1993 events, the Bank would not have required them to close either or both of the accounts before any such payment was made. Accordingly, the commissioners took the view that the outcome in this case would be the same whichever of the three re-negotiations one took. Both counsel, in their primary submissions agreed with that. So do I.

The deposit accounts were both closed on 18th December 1992, and the interest which had been compounded in accordance with the agreement reached between Orange and the Bank was paid in full on that date.

For the period during which this arrangement subsisted. the relevant branch of the

Bank debited its profit and loss account and credited its "sundry creditors" account with the interest which accrued each quarter on the deposit accounts. Further, on 2nd November 1990, the Bank set up two suspense accounts, one in respect of each of the deposit accounts, one in respect of each of the deposit accounts, and, at the end of each quarter, amounts equivalent to the interest payable in respect of the deposit account, and in respect of the interest earned on the interest already paid into the suspense account, was paid into each suspense account. The suspense accounts were purely for the internal administrative purposes of the Bank, and Orange was not merely uninvolved in their establishment, but was not even told that they had been set up.

THE RELEVANT PROVISION OF THE 1988 ACT

By virtue of Section 18(2) and (3), income tax charged under Case III of Schedule D, subject to and in accordance with the provisions of the Tax Acts Applicable to that Case, in respect of:

"any interest of money, whether yearly or otherwise...whether the same is received and payable half-yearly or at any shorter or more distant periods..."

Section 64 provides that, subject to immaterial exceptions:

"income tax under Case III of schedule shall be computed on the full amount of the income arising within the year preceding the year or assessment, and shall be paid on the actual amount of that income, without any deduction."

Section 6(1) charges corporation tax on "profits" of companies, defined in sub-section (4)(a) as meaning income and chargeable gains. Section 8(3) provides that assessments to corporation tax shall be made on a company by reference to accounting periods. Section 9 provides for the application of income tax principles in computing the amount of any corporation tax purposes.

Section 70(1) provides that:

"...for the purposes of corporation tax for any accounting period income shall be computed under Cases I to VI of Schedule D on the full amount of the profits or gains or income arising in the period."

THE ISSUE

It is common ground between the parties that the interest payable on the deposit accounts is "income arising" to Orange. The issue between the parties, both before the

Special Commissioners and on the appeal before me, may also be shortly expressed. Orange contends that the whole of the interest payable in respect of the deposit accounts was not paid until 18th December 1992, and should therefore be treated as "income arising" in respect of Orange's accounting period year ending on 31st December 1992. The Revenue, on the other hand, contends that each quarterly instalment of interest due on each of the deposit accounts should be treated as "income arising" in respect of the accounting year in which that quarter falls.

In a fully reasoned decision, the Special Commissioners agreed with Orange's contention, and the Revenue now appeals against that decision

DISCUSSION

I have reached the conclusion that Orange's argument is to be preferred, and therefore I would dismiss the Revenue's appeal.

The principle of compounding

First, as a matter of ordinary language, and putting on one side for the moment the substantial number of authorities on the point, it appears to me that, from Orange's point of view, the interest was not "income" which "arose" until it was actually paid over to Orange in December 1992. Following the arrangements agreed in mid-1990, Orange had no right to receive any interest until January 1993, unless it gave notice to the Bank that it wished to be paid the interest (or, at least following the last exchange of correspondence to which I have referred, if it closed the relevant deposit account).

It is true that the interest was accruing, and indeed was being compounded on a quarterly basis, but it was being retained by the bank. To my mind, therefore, while it may have been a debt which was accruing, and could be called by Orange at any time on notice, it was not, as a matter of ordinary language, income, until it was paid.

In this condition, the internal arrangements within the Bank, and in particular the setting up of the suspense accounts, do not, in my judgment, assist the Revenue. In this connection it is fair to Mr Launcelot Henderson QC, who appears on behalf of the Revenue, to say that he did not place much weight on them. I consider that it would require very unusual circumstances indeed before the internal arrangements of the debtor, unknown to the creditor and not, at least on the face of it, giving any new rights to the creditor, could alter the liability of the creditor to tax. It is true that the sums paid quarterly into the suspense accounts by the Bank could be said to be no more and no less "the property" of Orange than any payments of interest would have been of credited to the deposit accounts in the name of Orange. However, that appears to me to ignore commercial common sense and practice. In my judgment, payment of money into a person's bank account (although it may be said to involve nothing more than entry into the bank's computer records) would be regarded in the commercial world as payment, in a way that payment into an account set up by the bank in its own name for internal accounting purpose would not. As was said by Scott J in *Parkside Leasing Ltd -v- Smith* [1985] STC 63 at 66h-j:

"To regard the payment of money into the payee's bank account as

equivalent to the payment of the money to the payee is one thing. It reflects the part that banking arrangements play in the manner in which people arrange their financial affairs. Money credited to a person's bank account in accordance with his instructions must, in common sense and in law, be regarded as money thereby received by that person. The money is thereby placed at the disposal of that person."

Of course, the question as to what constitutes "income arising" in the context of taxation legislation is by no means free of authority. In *St. Usines and Estates Co. Ltd -v- Colonial Treasurer of St. Lucia* [1924] AC 508, Lord Wrenbury, giving the judgment of the Privy Council in relation to an Ordinance which rendered interest liable to tax if it was "income arising and accruing" in the relevant year said this at 512:

"The words "income arising or accruing" are not equivalent to the words "Debts arising or accruing". To give them that meaning is to ignore the word "income". The words mean "money arising or accruing by way of income". There must be a coming in to satisfy the word "income"."

I find this short passage helpful. In the first place, it does seem to me to support the simple proposition that there is no "income" liable to tax unless some money has "come in". Secondly, it distinguishes between income and debt: so long as the interest in the present case was accruing and not called by Orange, it appears to me to be an accruing debt, which, as Mr David Goldberg QC, who appears on behalf of Orange, contended, is the antithesis of income in the sense that, so long as the debt is wholly unpaid, there is no income, and once it is wholly paid, the payment is income, and the debt is no more. Thirdly, in so far the words qualify "income" are relevant, that case could be said to have stronger than the present from the Revenue's point of view, because of the words, "or accruing" after the word "arising."

To much the same effect, in *Leigh -v- The Commissioners of Inland Revenue* (1927) 11 TC 590, Rowlatt J said at 595:

"Now one must, I think, remember this, that receivability without receipt for the purpose of Income Tax is nothing at all. There is no Income Tax or Super-tax upon a good debt or upon the value of a moderate debt. I am not speaking of course, of mercantile accounts where these things are brought in, or anything of that sort; but there is not such a thing as Income Tax upon a debt until it is paid."

Those observations were cited with approval by Lord Hanworth MR in *Dewar -v- Inland Revenue Commissioners* (1935) 19 TC 562 at 576-7. I appreciate that in *Dunmore -v- McGowan (HMIT)* (1978) 52 TC 307 at 316d. Stamp LJ (with whom the

other members of the Court of Appeal agreed) said that "the doctrine that "receivability without receipt is nothing" is a doctrine which can be pressed too far". However, that was in a case where that tax payer was arguing that payment of interest by the bank into an account at the bank, set up by agreement between the tax payer and the bank, for the tax payer's own benefit, was not "income arising" when it was paid, because the account was charged to the bank to support a guarantee given by the tax payer to the bank. Despite the fact that, because of the existence of the charge, the tax payer could not do what he liked with the interest, on the date that the interest was paid into the account "every penny of that interest inured to the [tax payer's] benefit in any event; it swelled the assets of the [tax payer] on that day", see at 315c from the judgment of Brightman J, which Stamp LJ fully endorsed, at 316c. In the present case, the interest may have been "accruing" until 18th December 1992, but I do not think one can say that "every penny of that interest inured" to Orange's benefit until it was paid on that day. Stamp LJ at 317b put it in his words in this way:

"the interest was received or "got" when it was credited to the deposit account, an account of money which was at all times owed by the bank to the tax payer, albeit charged in support of the guarantee."

It appears to me that observation also supports Orange's contention in the present case. Following the initial agreement in correspondence between Orange and the Bank, no interest was credited to any account in the name of Orange, or in favour of Orange. Furthermore, while Orange had the right at any time to "get" the interest, either by asking for it or by closing the deposit account, it would not as a matter of ordinary language, "get" the interest until it asked for it or closed the account or until January 1993.

While accepting Mr Henderson's contention that it was concerned with a somewhat differently worded statutory provision (Section 36 of the Income Tax Act 1918, which entitled a tax payer to repayment of tax in certain circumstances where "interest ... *is paid* to the bank without deduction of tax") I do derive some comfort from observations in the House of Lords in *Paton (as Fenton's Trustee) -v- Commissioners of Inland Revenue* (1938) 21 TC 626. At 660, Lord Atkin said this referring to a decision of Russell J in *Re Jauncey* [1926] Ch 471:

"It was contended that, in those circumstances, interest must be deemed to have paid so as to affect of the Real Property Limitation Acts. Lord Russell said that such a construction "would really amount to a travesty of the actual facts: because in the case of such a provision as is contained in the present deed, which enables the interest to be capitalised, the interest is not capitalised because it is in fact paid, but because it has in fact not been paid". I can add nothing to that succinct statement,"

In the present case, the agreement between Orange and the Bank was that, at least so long as Orange was content, interest should be compounded, and, in light of the

observations I have just cited, it would be difficult to see how it could be said that, during the period of compounding, there had been any "payment" of the interest. Of course, in the present case, the relevant statutory wording is different, and therefore it would be wrong to place too much weight on this statement. For the same reasons, I derive comfort, but no more, from observations of Lord MacMillan in the same case at 664:

"my Lords, it is a condition of a claim for repayment of tax on bank interest under section 36(1) that the taxpayer shall have "paid" to his bank the interest in respect of which he claims repayment of tax. In my opinion this means that the taxpayer must really, and not merely nominally, have paid the interest; there must be payment such as to discharge the debt; the payment must be a fact, not a fiction."

I also derive comfort from an extract to which I have been referred in the *Inland Revenue's Assessment Procedure Manual*. At paragraph 2180, one finds the following under the heading "Assessment Procedures\Schedule D\Case III\Date when income arises":

"Where interest on a deposit account is not credited regularly at periodical intervals but is allowed to accrue either at the customer's request or under a bank's practice whereby crediting is deferred until the customer makes application."

Similarly, I note that in Part II of Chapter IV of the Finance Act 1996, the legislature has prospectively ruled that arrangements such as those entered into by Orange and the Bank in the correspondence in the present case would thenceforth have the effect for which the Revenue contends here, at least where the taxpayer is a company.

Compounding was agreed subsequently

Mr Henderson contended that, even if the arrangement entered into between Orange and the Bank, in the correspondence to which I referred, would have produced the result for which Orange contends (and the Commissioners accepted) if it had been the original basis upon which the deposit accounts were originally set up, but was a variation of that original arrangement. In this connection, he relies on the fact that the original arrangement was that interest would be paid to Orange (no doubt by being credited to the deposit accounts) on a quarterly basis.

The argument ran thus. As at 13th June 1990, Orange had substantial sums in two deposit accounts with the bank, in respect of which it had the right to be paid interest at the end of every quarter. On its own initiative, Orange persuaded the bank to agree that the interest to which Orange would be entitled was not to be paid to Orange, but was to be retained by the bank and compounded for the ultimate benefit of Orange. In those circumstances, he contended, the quarterly interest on the deposit accounts did not cease to be at the disposal of Orange. and therefore did not cease to be "income

arising" to Orange; the arrangement between Orange and the bank clearly, as he put it, constituted a method by which Orange chose to dispose of the interest for its own benefit.

In this connection, Mr Henderson relied on a case which I have already referred, namely that of the court of Appeal in *Dewar*. In that case, the tax payer was entitled to a legacy of £1,000,000 under his uncle's will, and pursuant to what Lord Hanworth at 569 called "an old established...custom" he was entitled to be paid interest by the executors at the rate of 4% per annum in respect of any period during which the pecuniary legacy remained unpaid after one year from the testator's death. He was charged for surtax in respect of such interest, and, despite finding that he had not received any sum in respect of such interest, and, indeed that he "had made no election as to whether or not he would claim the interest" (at 562) the Special Commissioners held the tax payer liable on the basis that such interest was to be treated as "income arising" in the relevant year. Finlay J reversed the decision of the Commissioners, and the Court of Appeal upheld him.

Before considering the decision of the court of Appeal, it is right to say that Lord Hanworth emphasised at the beginning of his judgment, at 569, that "the case turns upon an appreciation of the exact facts". At 570 to 571, having asked whether the interest of £40,000 ought to be included in the tax payer's assessment, he said this:

"It is said that it was his disposal. Now observe the facts. It is not a case in which the legatee, exercising his own volition, has told the executors to put the money into a bank or to hold it in a bank to his use; he has not made any direction of any sort or kind in respect of the £40,000.

The money left in this way, that if he were minded to ask for £40,000, or part of it, it would have been possible for him to have been paid and to have received it. But the fact is that he has not done anything at all in respect of that and the money has not been appropriated to his use, it has not been deposited at his direction, and it is not lying under his name, either in the hands of a bank, or any other agent."

At 573, having pointed out that the relevant statute charged to tax income "arising [to the taxpayer]", he said this:

"If it has not arisen to him, if he has not become the dominus of this sum, if it does not lie to his order in the hands of this agent, can it be said that it has arisen to him? I think the answer definitely upon the facts must be: No, it has not"

here are two other passages I must refer to in Lord Hanworth's judgment. At 574, he pointed out that the relevant statutory provision rendered liable to tax sums "which were received and payable" and went on to say this:

"The word "payable" there does not mean: if you like to put out your hand and ask for it it will then be payable to you; it is dealing with a sum which "whether yearly or otherwise", is in fact received, whether it is payable."

At 577, after referring with approval to the observations of Rowlett J which I have quoted above, Lord Hanworth said this:

"Before a good debt is paid there is no such thing as "Income Tax upon it". I agree with those words. It appears to me that the reason why you make up for the particular year is that you look to see in the course of that twelve months what has been received, and it may be that a good debt will be paid in a subsequent twelve months and not in the twelve months in respect of which you are making your declaration, and you cannot anticipate that the money will come in in its proper place in the following twelve months. I think Mr Justice Rowlatt was right in saying that for Income Tax purposes receivability without receipt is nothing."

In my judgment, properly analysed, those observations assist Orange rather than the Revenue. As Mr Goldberg pointed out, it is important to note that Lord Hanworth refers in the first passage which I have quoted to "the money", not to "the debt", and in the second passage which I have quoted to "the sum" and not to "the debt". In my judgment, as a matter of ordinary language, the arrangement between Orange and the bank did not involve Orange requesting or requiring the bank to do anything with any "money", any "sum", indeed any "income". Orange's request and instructions to the bank concerned what would be done with regard to a prospectively due debt (sc. the interest) which was accruing and had yet to accrue.

In effect, Orange's instructions to the Bank were to retain the interest for the time being, not to pay it to Orange. While I accept that Orange was to be paid the interest in due course whereas in *Dewar*, the taxpayer had not decided whether to ask for the interest at all. Until December 1992, Orange "had not done anything in respect of [the interest]", the interest had "not been appropriated to [Orange's] use"; it had not "been deposited at [Orange's] directions"; and it was "not lying under [Orange's] name or in the hands of [the] Bank.

Furthermore, the pithy observation that "if you like to put out your hand and ask for it it will be payable to you", that does not mean that a sum is payable is of assistance. To my way of thinking, it means that the mere fact that Orange could ask for payment of the interest does not mean that it is income. The sum had to be "in fact received", before it was made liable to tax. Furthermore, the final passage I have quoted makes it very clear that Lord Hanworth had well in mind the difference between a debt and payment.

I do not read the observations of Lord Hanworth as applying only to a case where the taxpayer creditor has voluntarily foregone payment or may permanently forego

payment or (as in *St Lucia* and *Leigh*) was forced to forego payments. I think that view is supported by what Romer LJ said in *Dewar* at 579:

"Now it is said, and said truly, that it has been received by Mr Dewar or placed as his disposal owing to his voluntary act or omission; that is to say the interest has not been paid, not because the debtor cannot pay it, but because Mr Dewar has not thought fit to ask for payment, and further has intimated the possibility of his releasing the debtor's altogether from payment of that interest. But for the purposes of Income Tax, one does not take an account of an impossible income on the footing of wilful default. The question is what income the man has received, and not what income he has received or but for his wilful default might have received."

It is fair to say that, because those observations were directed to the facts of that particular case, it is not clear how important Romer LJ thought the fact that the tax payer might actually waive his right to the interest was. In my judgment, however, that does not matter. If that would not have been a decisive factor, then the observations of Romer LJ appear to me pretty clearly to assist Orange's case. If, on the other hand, he was saying that there might never be any liability to tax because that right to receive that interest might be permanently waived, then, in my view, it would logically follow that he would also have that waiver of the right to receive interest for a period, that is a temporary deferral of the right to receive the interest, would have resulted in the interest being income only when it was paid after the period of deferment. In my judgment, it is hard to see why the result should be any different depending on whether the deferment was enforced (as in *St Lucia* and *Leigh*) or voluntary (as in *Dewar*) or by agreement (as in the present case) and whether the agreement is at the instigation of the tax payer or a debtor. I mention that because Mr Henderson suggested that the result could be different depending on how the deferral occurred. As I say, I can find no support for such a suggestion, whether in logic or in the authorities.

Furthermore, standing back, it appears to me that it would be somewhat surprising an arrangement such as that entered into between Orange and the Bank in the correspondence to which I have referred would have resulted in the interest being treated as "income arising" only on 18th December 1992 if it had been the original basis upon which the deposit accounts had been opened, but that it produces a wholly different result because, shortly after the deposit accounts were opened, it was the renegotiated basis upon which interest was to be paid. It would be peculiar if this appeal succeeded because the basis upon which interest was payable was renegotiated in relation to the deposit accounts, rather than, for instance, the deposit accounts being closed and new deposit accounts being opened in Orange's favour at the Bank, or if Orange had closed down the deposit accounts with the Bank, and had opened new accounts on the renegotiated basis with a different bank.

The Ramsey principle

Mr Henderson's final argument was that, even if the appeal should otherwise fail in

light of the factors I have so far mentioned, it should nonetheless should nonetheless succeed in light of the guidance given by Lord Steyn in *Inland Revenue Commissioners -v- McGuckian* [1997] 1 WLR 991 at 998G to 1000H. In his speech (with which Lord Lloyd of Berwick at 998F and Lord Cooke at Thorndon at 1005A agreed) Lord Steyn succinctly and elegantly explained how the modern approach to the construction of taxing statutes has evolved and how what he called "the new *Ramsey* principle [1982] AC 300" was to be applied. He said this at 1000G:

"The new development was not based on a linguistic analysis of the meaning of particular words in a statute. It was founded on a broad purposive interpretation, giving effect to the intention of Parliament. The principle enunciated in the *Ramsey* case was therefore based on an orthodox form of statutory interpretation. And in asserting the power to examine the substance of a composite transaction the House of Lords was simply rejecting formalism in fiscal matters and choosing a more realistic legal analysis. Given the reasoning underlying the new approach it was wrong to regard the decisions of the House of Lords since the *Ramsey* case as necessarily marking the limit of the law on tax avoidance schemes."

Relying on this passage, Mr Henderson contended that, whatever might have been the right answer on the present facts before the new development discussed by Lord Steyn, a more robust approach was justified now. He pointed out that the renegotiated basis for the payment of interest was entered into purely to benefit Orange's position with regard to payment of tax, and, further, that, given that Oranges had the right to require the Bank to pay the interest at any time, even after the renegotiation, the proper conclusion to draw was that the interest remained income arising on each of the quarter days on which it had fallen due for payment prior to the renegotiation.

I do not accept the argument. In the first place, as Mr Goldberg pointed out, even accepting that the *Ramsey* principle is capable of extension and adaptation from the original decision and subsequent decisions in which it has been applied, it cannot alter the basis nature of "nature arising" for the purposes of the 1988 Act. As Lord Steyn emphasised in *McGuckian* at 1000F:

"The new *Ramsey* principle ... was not invented on a juristic basis independent of statute. That would have been indefensible since a court has no power to amend a tax statute. The principle was developed as a matter of statutory construction."

Secondly, and quite apart from this argument, the renegotiated basis upon which interest was accrued and compounded on a quarterly basis, was an arrangement which was quite capable of being, as it were, free standing. In other words, as I have already mentioned, there would have been nothing to stop Orange closing the deposit accounts, and opening two new accounts with a different bank on the basis that interest would be compounded on a quarterly basis. and would not be paid unless and

until Orange asked for it to be paid, subject to a long-stop date. Furthermore, the renegotiated basis upon which interest was to be compounded was a genuine arm's length agreement between the tax payer and a third party, namely the Bank, which effected a real, if in practice, not very far reaching, variation to the original basis on which the accounts were operated: instead of interest being automatically paid on a quarterly basis, it was not paid, but fell to be compounded on a quarterly basis, until a specified date in the future, unless, prior to the date, payment was demanded by Orange.

It is also right to point out that it is not as if the rearrangement of the basis upon which interest was to be paid was artificial, or involved an attempt, as in *McGuckian*, to convert income into capital for taxation purposes. The rearrangement does not involve trying to turn what would be income for the purposes of the 1988 Act into something else, or even to reduce that income: it merely involves seeking to deter the date on which the interest becomes "income arising." It is true that the result of this rearrangement, if successful, is to enable Orange to reduce or defer its liability to tax. As I understand it, Orange had losses in the accounting year ending 31st December 1992 which can be off- set against the interest, but only if the interest is income arising in respect of the accounting period ending 31st December 1992. Those losses are genuine losses, and, as was emphasised by Lord Steyn, the observation of Lord Tomlin in *Inland Revenue Commissioners -v- Duke of Westminster* [1936] AC 1, 19 to the effect that every man is entitled, if he can, to order his affairs so that the tax under a tax statute is less than it would otherwise be, still stands (see *McGuckian* at 998H and 1000E).

I do not consider that the *Ramsey* principle can properly entitle the court to over-ride, as it were, a simple and genuine renegotiation of the basis upon which interest is to be paid or to accrue on an account, merely because its commercial effect is not very different from the original basis for the payment of interest and because the renegotiation was to improve the tax payer's position so far as payment of tax is concerned.

CONCLUSION

In these circumstances, for reasons which are substantially the same as those contained in the decision of the Commissioners, I dismiss the appeal.

I should like to thank both counsel for their clear and helpful skeleton arguments and their succinct submissions.