

IN THE HIGH COURT OF JUSTICE

CHANCERY DIVISION

UNITED FRIENDLY INSURANCE PLC

Plaintiff

- v -

THE COMMISSIONERS OF INLAND REVENUE

Defendants

Mr David Goy QC and Mr Philip Baker (instructed by Messrs Slaughter & May) of behalf of the Plaintiff

Mr Ian Glick QC and Mr Michael Furness (instructed by The Solicitor of Inland Revenue) appeared on behalf of the Defendants

Hearing: 2 April 1998

Judgment: 22 April 1998

BEFORE: MR MICHAEL CRYSTAL QC SITTING AS A DEPUTY JUDGE OF THE CHANCERY DIVISION

JUDGMENT

INTRODUCTION

1. Prior to 6 April 1979, individuals who paid life assurance premiums to a life office paid the premiums gross and were given relief from income tax in their individual tax assessments. From 6 April 1979 Life Assurance Premium Relief ('LAPR') was given at source. Individuals deducted and retained appropriate amounts from premium paid to the life office. The life office then obtained reimbursement from the Inland Revenue for deficiencies in the premiums it had received. The procedure for claiming such deficiencies is contained in the Income Tax (Life Assurance Relief) Regulations 1978 SI 1978 No. 1159 ("the Regulations").

2. The system of LAPR at source was introduced by s.34 and Schedule 4 to the Finance Act 1976. LAPR was withdrawn by the provisions of s.72 Finance Act 1984 with respect to policies made after midnight on 13 March 1984.

United Friendly Insurance plc ("UFI") is a life office writing policies which qualified for LAPR. UFI made annual deficiency claims in respect of periods ending 31 December 1984 to 1991. A dispute has arisen between UFI and the Commissioners of Inland Revenue ("the Inland Revenue") as to whether certain of the policies issued around the time of the abolition of LAPR on 13 March 1984 were or were not eligible for relief. Whether or not these policies were eligible is the substantive issue in appeals which are before the Special Commissioner.

4. In correspondence, UFI's solicitors raised the issue of the procedure by which the Inland Revenue might recover overpayments of deficiencies if the Special Commissioners were to hold in the Inland Revenue's favour on the substantive issue. UFI's position is that any overpayments of deficiencies can only be recovered by assessments under the provisions of the Taxes Management Act 1970 (the "TMA 1970") and that the Inland Revenue is now out of time to issue such assessments in relation to all years other than 1991. The Inland Revenue contends that it can recover any overpayments under the provisions of Regulation 10(6) of the 1978 Regulations without the need to issue assessments. It is now common ground that if assessments need to be issued, the Inland Revenue is out of time to issue such assessments other than in relation to 1991 (where a 'protective' assessment was issued in time).

#### THE ORIGINATING SUMMONS

5. The present originating summons was issued by UFI on 3 December 1997 to obtain the Court's ruling on whether UFI's position on the recoverability of any overpayments is the correct one. The material parts of the originating summons, as amended in the course of argument before the Court, are as follows:-

"(1) A declaration that upon the true construction of Schedule 14, paragraph 7 of the Income and Corporation Taxes Act 1988 (and its predecessor, Schedule 4, paragraph 16 of the Finance Act 1976) and of section 29(3)(c) and/or section 30 of the Taxes Management Act 1970 and of Regulation 10(6) of the Income Tax (Life Assurance Premium Relief) Regulations 1978 (SI 1978 No. 1159), the said Regulation itself gives rise to no enforceable right of the Defendants to recover overpayments of deficiencies made by the Defendants to the Plaintiff during the calendar years ending 31 December 1984 to 31 December 1991;

(2) A declaration that upon the true construction of the said provisions, the Defendants may only recover overpayments under Regulation 10(6) from the Plaintiff by the issue of assessments under the provisions of the said section 29(3)(c) and/or section 30.'

#### STATUTORY FRAMEWORK

6. Although the system of LAPR at source was introduced by the Finance Act 1976, it is convenient to refer to the legislation in the form in which it appears in the Income and Corporation Taxes Act 1988 ("ICTA 1988"). LAPR is provided for by s.266

ICTA 1988.

7. Section 266, so far as material, provides as follows:

"(1) ... an individual who pays any such premium as is specified in subsection (2) below ... shall (without making any claim) be entitled to relief under this section.

(2) The premiums referred to in subsection (1) are any premiums paid by an individual under a policy of insurance or contract for a deferred annuity, where -

(a) the payments are made to ...

(i) any insurance company legally established in the United Kingdom ...

and

(b) the insurance or, as the case may be, the deferred annuity is on the life of the individual or on the life of his spouse; and

(c) the insurance or contract was made by him or his spouse.

(4) ... relief under this section in respect of any premiums paid by an individual in a year of assessment shall be given by making good to the person to whom they are paid any deficiency arising from the deductions authorised under subsection (5) below ...

(5) Subject to the provisions of Schedule 14 -

(a) an individual resident in the United Kingdom who is entitled to relief under this section in respect of any premium may deduct from any payment in respect of the premium and retain an amount equal to 15% of the payment; [NOTE: reduced to 12.5% with effect from 6 April 1989] and

(b) the person to whom the payment is being made shall accept the amount paid after the deduction in discharge of the individual's liability to the same extent as if the deduction had not been made any may recover the deficiency from the Board."

8. Part II of Schedule 14 ICTA 1988 contains provisions which supplement s.266. Paragraphs 4 to 6 deal with the relief given to policyholders. Paragraph 7 (formerly Schedule 4 paragraph 16 Finance Act 1976) provides:

"(1) The Board may make regulations for carrying into effect section 266(4), (5), (8) and (9) and the preceding provisions of this

Schedule and paragraphs 9 and 10 of Schedule 15 ...

(2) Regulations under this paragraph may, without prejudice to the generality of sub-paragraph (1) above provide ...

(c) for the manner in which claims for the recovery of any sum under section 266(5) (b) may be made. [NOTE: i.e. claims for the recovery of deficiencies by the life office from the Inland Revenue.]

(3) The following provisions of" [the TMA 1970] "that is to say -

(a) section 29(3)(c) (excessive relief);

(b) section 30 (recovery of tax repaid in consequence of fraud or negligence etc);

(c) section 88 (interest); and

(d) section 95 (incorrect return or accounts);

shall apply in relation to the payment of a sum claimed under section 266(5)(b) to which the claimant was not entitled as if it had been income tax repaid as a relief which was not due."

9. Section 29(3)(c) TMA 1970 provides, as far as material, as follows:

"(3) If an inspector or the Board discover -

(a) ..., or

(b) ..., or

(c) that any relief which has been given is or has become excessive, the inspector or, as the case may be, the Board may take an assessment in the amount, or the further amount, which ought in his or their opinion to be charged.'

10. Section 30 TMA 1970, in its form prior to its substitution by s.149(1) Finance Act 1982 provided as follows:-

"Recovery of tax repaid in consequence of fraud or negligence  
Where, in consequence of a person's fraud, wilful default or negligence, any tax has been repaid which ought not to have repaid, the amount thereof may be assessed to tax and recovered accordingly, and an assessment to income tax or corporation tax

under this section shall be made under Case VI of Schedule D.'

As substituted it read:-

"Recovery of overpayment of tax etc

(1) Where an amount of tax has been repaid to any person which ought not to have been repaid to him, that amount of tax may be assessed and recovered as if it were unpaid tax.

...

(5) an assessment under this section shall not be out of time under section 34 of this Act if it is made before the end of the chargeable period following that in which the amount so assessed was repaid or paid as the case may be.

(6) Subsection (5) is without prejudice to sections 36, 37 and 39 of this Act. [NOTE: After s.149 Finance Act 1989 the reference is to s.36 alone.]"

THE 1978 REGULATIONS

11. The 1978 Regulations were made pursuant to Schedule 4 paragraph 16 of the Finance Act 1976 which was subsequently re-enacted as Schedule 14 paragraph 7 of ICTA 1988. For present purposes the procedures laid down by the Regulations may be summarised as follows:-

(1) The life office may claim in advance each month on an interim basis for the estimated deficiency for that month (Regulation 6). [NOTE: Under Regulation 8 there is also a procedure for interim claims in arrears.]

(2) The Board must then determine whether, and how much, to pay on the basis of the claim, and make the interim payment (Regulation 6(5)).

(3) The life office must, if it receives an interim payment in advance, file a "supplementary statement" within 2 months of the end of the month in respect of which the interim claim in advance has been made (Regulation 7). This must, so far as possible, be based on the amount of premiums actually received in the month in question and may only be based on an estimate so far as it is necessary to do so.

(4) If the supplementary statement shows a smaller deficiency than the interim payment made, the life office must repay the difference when making the supplementary statement. If it shows a larger deficiency, the Board must, if satisfied with the statement, pay the amount of the difference to the life office (Regulation 7(3)).

(5) If the life office fails to deliver a supplementary statement on time, the interim payment it has received becomes immediately recoverable by the Board (Regulation 7(4)).

(6) There is no appeal from the Board's decisions on interim claims (Regulation 10(2)).

(7) Within 1 year of the end of the financial year in question, the life office must make an annual claim. [NOTE: the period is 6 years if the life office has not received, or has received but repaid, interim payments.] This return must be based on the actual premiums received, not on estimates. If, after taking account of interim payments received for the year, the annual claim shows that the life office has been overpaid it must repay the overpayment when submitting the return (Regulation 9(5)).

(8) If the life office fails to deliver an annual claim, the Board may issue a notice showing the aggregate of the relevant interim payments for the year, and stating that the Board is not satisfied that the deficiency for the year exceeds a lower amount stated in the notice (Regulation 9(6)). If the life office does not deliver an annual claim within two weeks after the issue of the notice then the difference between the two amounts stated in the notice becomes immediately recoverable by the Board (Regulation 9(7)).

(9) On receiving an annual claim, the Board must decide to what extent it should be allowed, and if the Board decides to allow the claim for less than the full amount, the life office has a right of appeal to the Special Commissioners (Regulation 10(3)). On such an appeal, part V of the TMA 1970 (appeals and other proceedings) applies (Regulation 10(5)).

12. The Regulations contain a number of specific provisions which may result in the life office having to make repayments to the Board.

(1) Under Regulation 7(3), where the life office delivers a supplementary statement, "if the supplementary statement shows a deficiency less than the [interim] payment ..., the life office shall repay the amount of the difference to the Board with the statement."

(2) Under Regulation 7(4), "If in respect of an interim claim on which a payment has been made ... a life office fails to deliver a supplementary statement within the time required ..., the amount of the payment shall immediately be recoverable by the Board in the same manner as tax charged by an assessment which has become final and conclusive."

(3) Under Regulation 9(5), "Where the aggregate of the relevant interim payments shown by a[n annual] claim exceeds the deficiency for the year shown by the claim, the life office shall repay the amount of the excess to the Board with the claim."

(4) Under Regulation 9(7), "If an annual claim is not delivered to the Board within two weeks after the issue of a notice under paragraph (6) ... the amount of the difference between the aggregate [of the relevant interim payments for the year] and the lower amount stated in the notice shall immediately be recoverable by the Board

in the same manner as tax charged by an assessment which has become final and conclusive."

13. Mr Goy QC on behalf of UFI, accepted that each of these four repayment provisions could be used by the Inland Revenue to recover amounts from a life office without there being any need to issue an assessment.

#### REGULATION 10 OF THE 1978 REGULATIONS

14. Regulation 10 contains supplementary provisions dealing with deficiency claims. I have already mentioned Regulation 10 paragraphs 2, 3 and 5 above. Regulation 10(1) provides that s.42 TMA 1970 does not apply to claims under the Regulations, which provides its own procedures for the making of claims by a life office against the Inland Revenue.

15. Regulation 10(6) is as follows:-

"(6) All such payments and repayments shall be made as are necessary to give effect to the Board's decision on an annual claim, or to any variation of that decision on appeal."

16. Mr Goy QC submits that in a case where a life office is entitled to payment, Regulation 10(6) gives it that right without recourse to the statutory machinery contained in the TMA 1970. Where, however, it is the Inland Revenue which has a claim against a life office, he contends that Regulation 10(6) does not create any immediate obligation on the life office to pay, and that no such obligation arises unless and until the assessment machinery is used to create one. Mr Goy suggests that this, to my mind, somewhat surprising result arises either (1) because of the need for an application of ss.29(3)(c) and 30 TMA 1970 to the Inland Revenue through Schedule 14 paragraph 7(3) of ICTA 1988 or (2) because Regulation 10 is looking at the determination of final entitlement rather than, to use his expression "really quite short periods".

17. So far as his first argument is concerned, Mr Goy accepted that the application of ss.29(3)(c) and of the TMA 1970 was not mandatory, but suggested that unless they were applied to Regulation 10(6) they could be found no role to play in the 1978 Regulations. Given that the application of these sections is not mandatory, I do not accept the premise of this argument. Furthermore, if contrary to my view, a role has to be found for these sections, I accept Mr Glick's submission that they are a useful additional weapon in the Inland Revenue's armoury in those cases where, to use Mr Glick's colourful expression, "you discover that a life office has been pulling a fast one on you or there has been neglect or other new facts are discovered" after a decision has been made by the Inland Revenue on a life office's annual claim.

18. So far as Mr Goy's second argument is concerned, I do not accept that the structure of the Regulations justifies his suggested distinction between "short periods" dealt with in Regulations 7 and 9 and "final entitlement" dealt with in Regulation 10. Regulation 10 itself contains supplementary provisions which touch on both interim

and annual claims. The Regulations as a whole deal with two situations, namely interim claims and annual claims. Regulation 10(6) is in my judgment there to ensure that the Inland Revenue has an immediate enforceable statutory right to payment, subject to appeal, as and when the Board makes a decision which gives rise to a sum becoming due from a life office in respect of an annual claim.

### CONCLUSION

19. In my judgment, the Inland Revenue will have an immediate enforceable right to recover overpayments of deficiencies made by it to UFI during the calendar years ending 31 December 1984 to 31 December 1991 under Regulation 10(6) of the Regulations without issuing assessments under the TMA 1970, if it succeeds on the substantive issue before the Special Commissioners.

20. I accordingly decline to make either of the declarations sought by the Originating Summons. It was accepted that costs should follow the event. I accordingly order that the Originating Summons be dismissed together with an order that UFI pay the Inland Revenue's costs.