SELF-ASSESSMENT - Notice by the Inspector to the taxpayer calling for documents - Validity of notice - Acceptance by the Inspector that the notice had been complied with and that no penalties could be imposed upon the taxpayer - Whether the appeal should continue - Application for costs by the taxpayer - Taxes Management Act 1970 section 19A

THE SPECIAL COMMISSIONERS SpC 00224

SELF ASSESSED (No.2) Appellant

- and -

H M INSPECTOR OF TAXES Respondent

Special Commissioner: MR T H K EVERETT

Sitting in London on 10 August and 22 November 1999

ANONYMIZED DECISION

Self Assessed ("the Taxpayer") has appealed against her obligation to comply with a notice issued to her by the Respondent Inspector pursuant to section 19A Taxes Management Act 1970. That notice was issued on 15 December 1998 following my decision to quash an earlier notice served on the Taxpayer by the Respondent Inspector, also pursuant to section 19A Taxes Management Act 1970, and dated 7 September 1998. (See my unreported anonymised decision, Self-assessed v HM Inspector of Taxes dated 17 December 1998).

The hearing before me in relation to the second notice issued by the Inspector commenced on 10 August 1999. In the absence of the Respondent Inspector I adjourned the hearing to enable him to appear and to give evidence if necessary.

On 8 November 1999 a meeting took place at the offices of the Taxpayer's accountant at which some documents were made available to the Inspector. At the conclusion of that meeting the Inspector assured the Taxpayer's accountant that he considered there to have been compliance with the notice and that there was no question of penalties being imposed for non-compliance with the notice. This assurance was repeated in the Inspector's letter dated 15 November 1999 sent to the Taxpayer's accountant.

Despite these assurances, the Taxpayer decided to continue with her appeal.

Miss X, who appeared for the Inspector, submitted that the validity of the section 19A notice was now an academic question and that there remains no live issue between the parties. She submitted that the parties' rights and interests were not affected by the outcome of a full hearing -

(a) If the section 19A notice is determined to be valid no action will be taken. An assurance has been given that the Respondent considers that the Taxpayer has complied as far as possible with the notice. Subsection 97AA(4) prevents the imposition of penalties following compliance with the section 19A notice.

(b) If the section 19A is determined to be invalid it is submitted that, as the documents and information have been volunteered, no action can be taken by the Taxpayer in respect of such a determination.

She further submitted that the Respondent was acting in his capacity as Inspector of Taxes and thus as the representative of a public body. She conceded that this Tribunal has the discretion to continue to hear this appeal but that that discretion should be exercised with caution. She contended that it was not in the public interest for public funds to be expended on the hearing of this appeal and that it should be dismissed without a full hearing.

Miss X's authority for her contention is the recent case of Regina v Secretary of State for Home Department, ex parte Salem [1999] 2 WLR 483.

That case concerned an application for asylum by a Libyan national. By the time the appeal came before the House of Lords the applicant's claims had been granted and accordingly there was no live issue as to his position. The headnote to the appeal states as follows:

"On the question whether the appeal should continue:-

Held, dismissing the appeal, that on an appeal on an issue of public law involving a public authority the House of Lords had discretion to hear the appeal even if by the time it was due to begin there was no longer a lis to be determined directly affecting the parties' rights and obligations inter se; but that the discretion was to be exercised with caution, and academic appeals should not be heard unless there was a good reason in the public interest for so doing; and that, since the unusual facts did not appear to provide a good basis for deciding as a matter of general principle when an asylum claim was "determined," the appeal should not be proceeded with."

In my judgment there is no basis for the continuation of this appeal. There is no longer any dispute between the parties and any questions of interpretation of section 19A have been considered and dealt with in my anonymised Decision reported as Mother v HMIT [1999] STC (SCD) 279.

Accordingly I dismiss the appeal.

Application for costs

The Taxpayer's accountant has applied for costs, not in respect of his own fees and expenses but in relation to the expenses of his client, the Taxpayer.

He submitted that his client has been obliged to attend a second adjourned hearing of this appeal owing to the absence of the Respondent Inspector from the hearing on 10 August this year. Not only was he absent, but he failed to warn the Taxpayer that he would not be present at the hearing.

Regulation 21 of the Special Commissioners (Jurisdiction & Procedure) Regulations 1994 gives me an extremely limited power to award costs. I have to be satisfied that in the instant case the Respondent Inspector has acted wholly unreasonably in connection with the hearing. Although I have been critical of some of the Respondent Inspector's actions in relation to this appeal and its predecessor, I am not satisfied that he has acted wholly unreasonably.

The date of the original hearing on 10 August was set by the Presiding Special Commissioner at a directions hearing without reference to the convenience of the parties. The Respondent Inspector realised that he would be unable to attend but

arranged for a colleague to attend in his place and give evidence if required even though that colleague did not have full knowledge of all the facts relating to the Taxpayer's appeal.

I have also been reminded that the Taxpayer's accountant made an application for an adjournment of the hearing on 10 August 1999 but subsequently withdrew that application.

If I had a much greater power to enable me to award costs, such as is available to my colleagues, the chairmen of the Value Added Tax Tribunal, I would certainly be minded to accede to this application, but bound as I am by the terms of Regulation 21, I must regretfully refuse this application.

T H K EVERETT

SPECIAL COMMISSIONER

SC 3007/99