

High Court gives green light for offshore tax clawback...

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[High Court gives green light for offshore tax clawback - Times Online.](#)

This is an important case for HM Revenue & Customs to win.

The core of the argument was that 2008 legislation that allowed the Revenue to backdate claims against an abusive form of offshore trust were illegal as an infringement of the human right to enjoy property.

The claimant took advantage of a scheme designed and marketed by Montpelier Tax Consultants (Isle of Man). The judge was told that he settled a trust in the Isle of Man, the "Robert Huitson Family Settlement". The 2008 legislation means that Mr Huitson faces an overall tax demand in excess of £100,000 relating to the money he paid into the family trust back to 2001. As the Times notes:

Court documents reveal that 57 other scheme users say they cannot meet similar tax demands even if they sell all their assets, and another 29 could settle only by selling or remortgaging their family homes.

Several users also say that they face personal bankruptcy.

David Elvin, QC, appearing for Mr Huitson, said that the retrospective provisions of the 2008 Act affected 2,500 scheme users and involved £300 million.

He argued that the retrospective element of the legislation was incompatible with the "right to free enjoyment of property", as protected by Article 1 of Protocol 1 of the European Convention of Human Rights.

However, the judge dismissed the challenge and ruled that HMRC had not acted unlawfully or disproportionately in backdating.

Several key issues come out. First, and as I have been arguing for a while, there is no right to enjoy property if the tax due when securing it has not been paid: the two are indivisible.

Second, the Revenue do have the right to stop abuse even if they have to do so retrospectively.

Thirdly, and almost predictably it was one of the Crown Dependencies at the centre of this abuse, proving yet again they are secrecy jurisdictions.

Fourth, it is vital the Revenue do get cases like this in the press: I welcome the fact they have.

Fifth, the accountancy profession cannot be relied upon to uphold ethical standards or the rule of law. The Times notes:

Chas Roy-Chowdhury, of the Association of Chartered Certified Accountants said: "The case related to a particular trust arrangement but could have implications for similar offshore trust-based schemes.

"It is quite justified for the Government to attack complex schemes set up to avoid tax but it should not do it retrospectively."

That's a false argument: it's just been ruled lawful to pursue tax cheats. the profession should be applauding, not condemning HMRC for doing so. Why is it that accountants are so keen to join bankers in the pit reserved for the pariahs in society?