

# Book review

## 1 HAMILTON ON TAX APPEALS: A REVIEW

Authors: Penny Hamilton and Oliver Conolly

Publisher: Bloomsbury Professional, paperback, £95

One part of the creation of a harmonised tribunal system by the Tribunals, Courts and Enforcement Act 2007 was the replacement, with effect from 1 April 2009, of the General and Special Commissioners by the First-tier Tribunal (Tax) and, in respect of some of its functions, by the Upper Tribunal and the resultant reform of the tax appeals system. Penny Hamilton and Oliver Conolly of Pump Court Tax Chambers have written a comprehensive guide to the new appeals system.

The work is so comprehensive as to make even the job of the reviewer redundant as it includes a foreword by no lesser luminaries than Sir Nicholas Warren and Sir Stephen Oliver QC, respectively the President and Vice President of the Upper Tribunal Tax and Chancery Chamber, who describe the book as an 'indispensable *vade-mecum*'. It is indeed a very useful work which every practitioner who is concerned with tax appeals should consider acquiring for his library.

The first chapter provides a useful overview of the whole new appeals structure indicating the order in which the various elements are treated in the main body of the work. Its detailed consideration starts with a description of the structure of the tribunal system, its processes, its physical locations and its personnel and then, in two separate chapters, examines the tribunals' jurisdiction in respect of direct and indirect tax appeals.

It goes on to consider appeals in respect of penalties and the Upper Tribunal's judicial review jurisdiction. It then looks at two areas of law, EC law and Human Rights law, which have a particular relevance to its operation.

The book also deals with the new statutory procedure for HMRC to review appeals and the rules in respect of payment and postponement of tax. It considers, in detail, the whole process of an appeal: starting the appeal, the appeal documentation, the allocation of appeals to categories, preliminary applications, striking out and other sanctions, and then the hearing itself. It goes on to look at references to the European Court of Justice, challenging decisions of the First-tier and Upper Tribunals, orders for costs and the imposition of interest.

Finally it deals with the transitional provisions governing the introduction of the system, a brief overview of available remedies such as alternative dispute resolution and complaints to the Adjudicator's Office, and settling appeals by agreement. The appendices bring together a variety of materials which will be of use to practitioners including the procedural rules of the First-tier and Upper Tribunals.

All in all, the encomium of Sir Nicholas and Sir Stephen is amply justified. Nonetheless, nothing is perfect in this sublunary world and this book is no exception.

The book is essentially a work of procedural rather than substantive law, but the line between the two is not always easy to draw. Why, for example, does the book spend a considerable amount of time on principles of statutory construction in respect of European law and yet not examine the rules of discovery under TMA 1970, s 29 which are of such practical importance in direct tax appeals? That may be because the book is based upon Penny Hamilton's previous work on indirect tax appeals, *Hamilton on VAT and Duties Appeals*, to which s 29 is not relevant. Indeed, there is a general imbalance between direct and indirect taxes. For example there are four pages on jurisdiction in respect of direct tax appeals and 43 pages on indirect tax appeals.

**“It is a major achievement and an essential work of reference.”**

The publishers have chosen not to use footnotes but to place references in the text. This seems to have inhibited the authors from fully referencing their text to the authorities on which it is based, creating some inconvenience for the reader. The decision to provide statutory references in chapter 9 on the review process, only to the TMA 1970, and not to the various other statutory provisions regulating the process, such as Inheritance Tax Act 1984, s 223A to s 223I for inheritance tax, and FA 2003, Sch 10 paras 36A to 36I for stamp duty land tax, will further inconvenience practitioners of those other taxes seeking the correct statutory reference.

A feature of the book is its apparent reliance on HMRC guidance as an accurate statement of the law. Chapter 9 on the review process is particularly disappointing in that regard. The purpose of creating the tax tribunals was to produce a single appeal system which was manifestly independent of HMRC. The authors, however, have repeated the erroneous approach taken in HMRC's guidance in respect of direct tax appeals speaking of 'appealing to HMRC' and 'appealing to the tribunal'. Fortunately, HMRC have not yet become judges in their own cause and, in fact, only one appeal is made under the new system. That appeal is made to the tribunal, is first notified by the taxpayer to HMRC and then to the tribunal. The distinction is not simple pedantry. The new system will stand or fall by its independence of HMRC.

So this book could, and, I hope, will, be improved in future editions but in its present form it is a major achievement and an essential work of reference for the practitioner.

*Reviewed by Simon McKie*