

Douglas Keel

Call: 1997
 Education: MA (Oxon) FCA
 Email: keel@11sb.com
 Telephone: 020 7831 6381



Douglas was called to the Bar in 1997, having previously been a tax partner with Price Waterhouse specialising in international tax planning. His practice now encompasses the whole range of UK direct and indirect taxation for companies and internationals. He can be of assistance with:

- ◆ Minimizing tax liabilities
- ◆ Rationalizing complex arrangements
- ◆ Simplifying decision making
- ◆ Diagnostic health check – identifying hidden issues
- ◆ The construction and interpretation of double taxation conventions
- ◆ Tax effective document drafting
- ◆ Transfer pricing theory and practice
- ◆ Disputes with and between Revenue authorities
- ◆ Management and control of offshore vehicles (tax residence)
- ◆ Investment in overseas property and the funding thereof – advice on structuring UK property investment – any private client aspects to be handled in conjunction with the 11 Stone Buildings private client team
- ◆ Setting up of offshore companies in low tax jurisdictions in the light of anti-avoidance legislation
- ◆ International asset protection
- ◆ Exploitation of intellectual property rights

Cases for Douglas include:

AN Employee v Revenue and Customs Commissioners – SpC 673

This case concerned the validity of a discovery assessment and the tax treatment of unapproved share options on exercise.

The employee had received share options each year and had, when he exercised them, sold the shares on the same day, the resulting gain being taxed as income. When he left his employment he had to exercise any remaining options within 90 days but on exercise he did not sell all of the shares immediately; instead he held some for disposal later. As it happened the share price had peaked so that each time he sold shares the value had continued to fall – he was advised by his financial adviser’s tax specialist that HMRC’s interpretation of the law was incorrect as it made no sense to tax a notional gain arising on exercise using the market value of the shares at the time of exercise of the options since no gain had in real terms been realised then - only when the shares are disposed of; particularly in his case since he had realised on sale only a fraction of what HMRC wanted to tax him on. When his financial adviser submitted his tax return it was accompanied by a covering letter which mentioned that we have not reported share options where the shares were held

rather than sold on the grounds that no gain was realised at the time of the exercise of the option, but that where shares were subsequently sold during the year in question the disposals have been reported in the capital gains schedules. No enquiry was made by HMRC into the return by the due date 12 months after the original return was due and the taxpayer was advised that the return was now final and could not be reopened as full disclosure had been made. Two and a half years after the return had been filed HMRC wrote to the taxpayer indicating that they proposed to enquire into the return and a year later a discovery assessment was raised.

Following the introduction of self assessment in 1996/97 the time limits during which HMRC could raise assessments was reduced to one year in the absence of fraud unless the Inspector makes a discovery of a loss of tax due to fraudulent or negligent conduct by or on behalf of the taxpayer or HMRC could not have been reasonably expected, on the basis of information made available to them, to be aware of the loss of tax, within that period.

The wording of section 29 of the Taxes Management Act 1970 has been judicially considered in a number of cases and HMRC have issued two Statements of Practice, yet doubt has remained as to what a taxpayer has to do to avoid a discovery assessment.

Douglas Keel represented the taxpayer before the Special Commissioners. The discovery by HMRC arose out of a return of share options by the taxpayer's former employer although there was some doubt when such information had first come to their attention – the Special Commissioner accepted the HMRC timetable. Also the taxpayer wished to have the discovery issue heard as a preliminary issue rather than to have the basis upon which share options should be taxed as income heard at the same time – the Special Commissioner refused to do this on the grounds that it was inappropriate. The Special Commissioner found on the evidence of the Revenue officials that there had not unambiguously been disclosed any actual insufficiency in the self assessment return and further that the taxpayer's adviser should have been aware of the relevant authorities and that HMRC were entitled to assume that a professionally prepared tax return has been prepared competently. In the circumstances the Special Commissioner concluded that there was a loss of tax attributable to negligent conduct on the part of the taxpayer or his advisers and that HMRC were therefore entitled to make an out of time assessment.

The full judgment can be found on the www.financeandtaxtribunals.gov.uk website.