Analysis

Sajedi: an unwelcome *Ramsay* surprise

Speed read

The FTT's decision in *Sajedi* finds for the taxpayer on the narrow issue between the parties. But the FTT found itself able to consider issues the parties had agreed, and, applying the *Ramsay* principle by way of *Rossendale*, finds that the taxpayers did not meet the relevant conditions – and so determined that the taxpayers had not disposed of a major interest in a residence for the purpose of the SDLT rules. The FTT purports to interpret the verb 'dispose' in a way which qualifies the nature of what is being disposed as being too insignificant to have a real-world effect. This seems difficult to follow as a matter of pure statutory interpretation.

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Last month, I wrote, with Victoria Hine, about the Supreme Court invoking the principle in *WT Ramsay Ltd v IRC* [1982] AC 300 (*Ramsay*) without it having been argued between the parties ('*RBC*: from the island of literal interpretation to the continental shelf', *Tax Journal*, 7 March 2025). We expressed some surprise that the highest court in the land could say that the *Ramsay* principle was now mature and settled but appear to disagree on its scope and whether it could apply.

Following in its footsteps, the First-tier Tribunal (FTT) has, in *Sajedi and others v HMRC* [2005] UKFTT 297 (TC) (*Sajedi*), again invoked the principle where HMRC or the taxpayers did not raise it.

Background to the schemes

In 2016, Parliament imposed higher rates of SDLT for individuals who were buying their second home. The higher rates do not apply if the new home was 'a replacement for the purchaser's own or main residence'. That is taken to be the case where, among other conditions, the purchaser 'dispose[s] of a major interest' in the old home within three years of buying the new one.

Sajedi involved a scheme to claim repayment of the higher rates of SDLT. The taxpayers were two couples who acquired new homes in May and June 2017 and paid the higher rates of SDLT, but then, in 2020, transferred a 1% beneficial interest in the old home between themselves. The transferors retained a 49% stake in one case and a 99% stake in the other.

These types of schemes were the subject of an amendment by FA 2018. The rules as amended now only consider a new home to be a replacement for the old home if, after the disposal of the major interest, the purchaser no longer had any major interest in the old home. But the FA 2018 changes took effect for transactions occurring after 22 November 2017.

The sole issue between the parties

HMRC denied the claim for repayment. They said the FA 2018 changes applied to prevent a reclaim for the 2017 purchases because the event that gave rise to the repayment was a land transaction occurring in 2020.

The tribunal held that the transitional rules looked to the effective date of the transaction on which the repayment was being claimed. This was the purchase of the new homes, not the sale of the old homes. It said that the draftsperson could easily have achieved HMRC's approach, but there was clearly a desire to ensure a lack of retroactive taxation. So it found, clearly and concisely, for the taxpayer.

The tribunal takes a wider scope for itself

One might be forgiven in thinking that, the sole issue between the parties having been resolved in the taxpayer's favour, this was the end of the story. Not so.

The scope of an appeal to the FTT is set out in FA 2003 Sch 10 para 36D, which says that it is to 'decide the matter in question'. The tribunal said that the matter in question, at a high level, was whether a refund of SDLT was due. This, it said, permitted it to consider whether the other conditions for a refund were met, including whether the purchasers had disposed of a major interest in the old homes.

During the hearing the tribunal warned the taxpayers that they must establish all requirements for a refund, and at the end of the hearing directed further submissions to be provided and invited evidence, offering to list the hearing for an additional day. HMRC and the taxpayers instead provided a statement of agreed facts, saying that they considered there had been a disposal of a major interest in the old homes. The taxpayers went further and stated that, given these agreed facts, they did not think there was any basis for the FTT to find that the refund requirements were not met.

The tribunal felt this was in error. Whether or not the transfer of the 1% beneficial interest was a 'disposal of a major interest' was a mixed question of fact and law, not one capable of being agreed between the party as an agreed fact. It then went on to consider the substantive requirements.

Some confusion over 'major interest'

The tribunal first considered whether a 1% interest in a freehold is a major interest. That term is defined as including freehold interests, and in 2019 the higher rates rules were amended to confirm that undivided shares in major interest were themselves major interests. The 2019 amendments unfortunately post-dated the 2017 purchases of the new homes by the taxpayers.

The parties (again jointly) submitted that the 2019 amendments were clarificatory, and that shares of a freehold were still major interests prior to 2019. They also said that the 2018 amendments would not have otherwise been necessary: the planning involving selling a small part of an existing interest in the old home would not work unless selling a small part of a major interest still counted as a major interest. This seems straightforwardly correct, and it is to HMRC's credit that they jointly put this before the FTT.

This puzzled the tribunal, which said that it was 'a little difficult to follow', and that it was 'rather confused' to say that the 2019 changes were trying to ensure undivided shares were within the rules if the 2018 changes were saying they were abusive. One example which might illuminate is a person who owns a 50% undivided share of freehold, buys a second home to live in, and disposes of their 50% entire interest in the old home. Having disposed of their entire interest they would be unaffected by the 2018 changes,

but having sold a share of freehold would welcome the 2019 clarification.

In any event, the tribunal found it unnecessary to come to a view on this point given its findings on the meaning of 'disposed'.

A purposive interpretation of 'disposed'

The FTT begins by saying that 'disposed' must be interpreted purposively and in accordance with the prevailing case law, summarising a few of the well-known dicta from the *Ramsay* line of cases. It focused particularly on *Hurstwood Properties (A) Ltd v Rossendale Borough Council* [2021] UKSC 16 (*Rossendale*), a rates avoidance scheme where the Supreme Court found that 'entitled to possession' meant a 'real and practical entitlement' and did not encompass the purely legal possessory rights granted by the lease as part of the scheme.

There then follow eight short paragraphs of purposive interpretation of the meaning of 'dispose'. After outlining that the relief from the higher rates is to apply where the new home is a replacement for the old home, the tribunal quotes the explanatory note for the FA 2018 changes (which says that the changes 'prevent abuse by requiring the purchaser to dispose of the whole of their former main residence') and says this means that 'it was considered' contrary to the purpose of the provisions for a disposal to be less than the whole interest in the old home.

> Since it does not say that the transfers were a sham, the conclusion of the tribunal seems to be that the 1% interest transferred is de minimis and so the law should disregard it ... This seems difficult to follow as a matter of pure statutory interpretation

Pausing there, it does seem slightly odd to interpret Parliament's intention in enacting one statute by quoting explanatory notes from another. Much amending legislation is aimed at countering perceived abuse; it does not follow that the principal legislation always had a purpose of preventing it in the first place.

The tribunal does not interpret 'disposal' to exclude all part disposals. It says instead (at [143]) that:

> 'the words "disposes of a major interest" must be taken to be concerned with transactions that had a real-world impact on the rights and obligations of the parties consistent with the notion of a replacement of an only or main residence. This necessarily excludes transactions which do not appreciably affect the beneficial interests of the parties or do not meaningfully change the character of the parties' relationship to the property.'

The documents it reviewed are, said the FTT, 'equally consistent with a pure paper transaction with no intention to substantively alter the real world position of [the taxpayers] as it is with a real world disposal'. Given that the burden of proof is on the taxpayers, the FTT dismissed the appeal and says the refund is not available.

The limits of purposive interpretation?

A logical difficulty with the interpretation the FTT imposes on 'disposes of a major interest' is the fact that it has already accepted (at least for the sake of argument without deciding the point) that 'major interest' includes a 1% beneficial interest in a freehold. Again, that seems right, and HMRC agree. But, having accepted that a 1% interest is a major interest, and that as a matter of fact that that 1% interest was transferred from one party to another, what scope is there left for interpreting 'disposes' to find that the condition is not met?

In *Rossendale*, the Supreme Court said that 'entitled to possession' meant real-world, practical possession, and discounted purely legal rights which could not be practically exercised. That is an interpretation that the words can properly bear.

It seems a bit more of a stretch to interpret 'disposes' to mean 'disposes of in a way that has a real-world impact on the rights and obligations of the parties consistent with the notion of a replacement of an only or main residence'. Of course, it is open to the tribunal to say that the disposal must be a real disposal. But that is trivial: here the disposal of the 1% interest has a real-world impact on the rights and obligations of the parties. If the property were sold or let, then 1% fewer of the proceeds would accrue to the transferor. Indeed, one of the couples severed a joint tenancy and became tenants in common, changing their mutual rights of survivorship. There was nothing before the tribunal to lead it to say that this was a 'paper transaction', if by that the tribunal was trying to assert that the transaction was a sham or otherwise did not have real-world consequences.

Since it does not say that the transfers were a sham, the conclusion of the tribunal seems to be that the 1% interest transferred is de minimis and so the law should disregard it. The difficulty for the tribunal in this case is that the phrase 'disposes of a major interest' includes a noun phrase defined in the legislation ('major interest'), and a straightforward verb ('disposes'). If the tribunal were willing to say that despite the statute defining 'major interest' it would take a different interpretation, that would make sense. The test it proposes is about what is being disposed of; narrowing the noun phrase makes sense. But the FTT disavows that approach. Instead, it purports to interpret the verb 'dispose' in a way which qualifies the nature of what is being disposed as being too insignificant to have a 'real-world effect'. This seems difficult to follow as a matter of pure statutory interpretation.

An alternative could be to interpret 'disposes of' to mean 'disposes of all of' or 'disposes of all one owns of' the relevant interest. That would be consistent with the policy behind the rules. However, the FTT says that it does not take that approach for good reason: it would render the 2018 changes otiose. Judges typically shy away from an interpretation which gives no effect to part of an Act of Parliament. One must presume that Parliament meant what it said both in 2016 and in 2018.

Lord Nicholls said in *Barclays Mercantile Business Finance Ltd v Mawson (Insp of Taxes)* [2004] UKHL 51 that one must 'focus carefully upon the particular statutory provision and ... identify its requirements before one can decide whether ... elements inserted for the purpose of tax avoidance should be disregarded or treated as irrelevant for the purposes of the statute'. If an appeal is made, it may be that an approach more grounded in the words of the statute will succeed. ■

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- *RBC*: from the island of literal interpretation to the continental shelf' (V Hine & K Rainsford, 7.3.25)
- Avoidance outside tax: a new turn for *Ramsay* (D Stuttaford & S Casselbrant, 24.7.19)