

What goes around comes around? It is unlikely that this observation on the natural order of things will be of any comfort to Mr Lobler.

I read with interest the recent case of *Joost Lobler v HMRC* (TC02539) [2013] UKFTT 141 (TC). Mr Lobler had invested in some life assurance policies and in due course he made a partial surrender of a number of those policies. The result was a shocking tax charge. The First-tier Tribunal noted that: 'he made no profit or gain as that term is commonly or commercially understood and yet he becomes liable to pay tax which exhausts his life savings and may bankrupt him. That is an outrageously unfair result'. Regrettably, the tribunal 'with heavy hearts' were unable to provide him with any relief.

Everybody will sympathise with Mr Lobler because the legislation, now found in ITTOIA 2005 Part 4 Chapter 9, is indeed outrageously unfair – but we already knew that from the case of *Mayes v HMRC* [2009] EWCA 2443, in which the court highlighted their unfairness. The judge observed that: 'the legislation ... shows a lack of interest in (a) attributing gains to the person who made them, (b) not attributing gains to a person who did not make them, and (c) timing the taxation of the gain fairly'. HMRC freely acknowledged that 'some taxpayers end up by paying more or less tax than is strictly equitable'. And in *Mayes*, the taxpayer did indeed end up paying a lot less tax by the absurd complications inherent in the legislation.

I suppose this is payback time. The absurdity of the rules worked against HMRC in *Mayes* (which no doubt HMRC regarded as unfair) and they worked against the taxpayer in *Lobler* (which everybody else will recognise as unfair). Some might say that this is just how life is – so get over it. Errors and injustices occur but, like umpires decisions, they all balance out in the end. However, this cannot be right. These rules did not appear out of the air – they were deliberately enacted (misguidedly perhaps) and are part of the law of the land. We deserve better than this. There is no good reason for us to have (still less to keep) legislation which is so bad that it gives rise to outrageous unfairness. We want legislation which is fair to both the taxpayer and HMRC. It is to be hoped that when the courts highlight defects in legislation to such a spectacular extent, somebody might take some notice and realise that the integrity of our tax system needs to be looked after a bit more carefully.

Mr Lobler was just an ordinary taxpayer who invested some money and later withdrew some of it. He was not some arch tax avoider and he did not deserve to lose his life savings and face the risk of bankruptcy.

HMRC often explains that it has a duty of care and management of the tax system. I would suggest that preventing outrageous injustices, such as that perpetrated on Mr Lobler, ought to be high on HMRC's list when it is considering how to exercise its duty of care and management.

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