

CHAPTER XX

RESOLUTION OF INTERPRETATIVE INCOME TAX QUESTIONS BY INDEPENDENT TRIBUNALS

4.1 *Introduction*

Prime responsibility for resolving disputes over income, surtax, and profits tax has been divided between a group called General Commissioners and another known as Special Commissioners.

The Special Commissioners are a central body of full-time tax specialists, with jurisdiction over the whole country. In contrast, the General Commissioners are locally oriented. Each of the nearly 700 divisions, the areas into which Great Britain is divided for purposes of tax appeals,¹ has its own body of part-time General Commissioners.²

Responsibility is divided between the General and Special Commissioners as follows:

- (1) The General Commissioners have jurisdiction over almost all income tax questions. On some matters—e.g., claims for personal allowances and reliefs for family circumstances—they have exclusive jurisdiction.
- (2) The Special Commissioners have exclusive jurisdiction of a few income tax questions, notably relief claims by charitable bodies or by persons seeking exemption on the ground of nonresidence as well as claims for double taxation relief by way of credit for taxes paid overseas. (Presumably Parliament allocated these areas to the Special Commissioners because of the difficulty of the legal questions which emerge and the desirability of securing uniform interpretations.)

¹ In the main, these divisions correspond to the ancient areas of local administration.

² There are no General Commissioners in Northern Ireland. The Special Commissioners have jurisdiction to hear any appeal arising there which, if it arose elsewhere, could be heard by the appropriate General Commissioners. However, a Northern Ireland taxpayer may elect to have any such appeal heard by the local county court instead of by the Special Commissioners.

- (3) The two bodies have concurrent jurisdiction over a wide range of income tax questions, with the taxpayer being free to choose between the two bodies. Illustratively, the right of choice exists with respect to appeals against assessments on wages, salaries, business profits, interest, and income from overseas.
- (4) They also have concurrent jurisdiction with respect to appeals against assessments for the profits tax.
- (5) The Special Commissioners have exclusive jurisdiction over appeals relating to surtax.

Because of the many areas over which the General and Special Commissioners have concurrent jurisdiction, it is convenient to describe them collectively as appeal Commissioners. However complicated the distribution of responsibilities may appear, the appeal Commissioners do, nevertheless, provide full coverage for all income, profits, and surtax disputes.

While the appeal Commissioners constitute the main device for resolving tax disputes, some questions arising out of anti-avoidance legislation can go to two other tribunals: the Board of Referees (in existence for many years) and the special tribunal established for the purpose of the 1960 Act (see Chapter XVIII, 2.7 *supra*). Like the appeal Commissioners, neither of these specialized tribunals has any function outside the tax area.

The appeal Commissioners and the two specialized tribunals make their own independent findings of fact and draw conclusions as to the applicable legal principles. Their decisions on questions of law may be appealed to the ordinary superior courts of the country possessing a general jurisdiction.

Section A. *Organization and Procedures:* *Trial Level*

4.2a *Organization of the General Commissioners*

Each of the nearly 700 bodies of General Commissioners holds sessions in a convenient town located in or near its relatively small geographical division. In consequence, the taxpayer-appellant normally can expect the hearing to take place within easy traveling distance of his home or place of business.

There is no formal limit on the number of Commissioners to be appointed for any division.³ Two Commissioners are a necessary quorum to hear an appeal, but typically more than the minimum attend the sessions.

In England and Wales the Commissioners are appointed by the Lord Chancellor,⁴ in Scotland by the appropriate city or county council. The Commissioners are unpaid, but the clerk they appoint to assist them is remunerated from public funds. This clerk often holds a legal qualification although the Commissioners themselves are not expected to be legally qualified or possess special expertise in tax matters.⁵ The Radcliffe Commission stated the principles which should govern their selection:

In our view the qualities to be looked for are, in essence, that he or she should be an honest and fair-minded person, able to display some understanding of figures and of legal distinctions, and ready to treat his work as an important form of public service. It is desirable too, that the Commissioners in a division should not all come from one section of the taxpaying community and that they should therefore include in their number persons with incomes mainly dependent on personal earnings as well as persons whose incomes are derived from property.

4.2b *Organization of the Special Commissioners*

The Special Commissioners, with their jurisdiction covering the entire United Kingdom, are based in London. Many hearings take place there, but to accommodate appellants they also operate a circuit system visiting a number of the chief towns in the country.⁶

The eight Special Commissioners are appointed by the Treasury. They receive remuneration and give their full time to their duties. A quorum of two Commissioners is required to hear an appeal. The statute provides no particular qualifications for appointment, but in practice they are drawn in

³ Formerly, there was a limit of seven on the number of General Commissioners with provision for an increase if the work load required it.

⁴ Under the English legal system, the Lord Chancellor combines the functions of a Minister of Justice and the head of the judiciary.

⁵ The role of the General Commissioners in the tax area is comparable to that of lay justices of the peace in applying the general law of the land.

⁶ Since the Special Commissioners act in place of General Commissioners in Northern Ireland, their circuit coverage of those counties is particularly thorough.

roughly equal proportions from barristers and senior members of the Inland Revenue staff. After appointment, members from Inland Revenue have no further connection with their former Department.

4.2c *Organization of the Board of Referees*

The Board of Referees was created to deal with certain questions arising out of the temporary excess profits tax imposed during World War I. In theory, under certain circumstances it can be asked to determine the depreciation rate for any class of machinery, but in practice it only hears appeals growing out of legislation relating to the surtax avoidance which results when closely held companies fail to distribute their profits.

This complicated legislation is applicable in cases where the controlled company has retained more of its profits than is required to meet the reasonable needs of its business. Since this unreasonable accumulation deprives the Exchequer of the surtax otherwise payable by individual stockholder on dividends, Parliament provided in such cases for the surtax to be assessed as though a dividend had been in fact declared in an amount equal to the total amount of the undistributed income, not just to the amount considered to constitute an excessive accumulation. Failing payments by the stockholders, the surtax so assessed may be recovered from the company. Accordingly, the company has the right to appeal the determination on the ground *inter alia*, that amount of the accumulation was not unreasonable.

Since such an appeal concerns surtax, it lies within the jurisdiction of the Special Commissioners. There are in addition two ways which enable the company to lay the case before the Board of Referees:

- (1) When the Inland Revenue threatens such a determination, the company's directors may, in effect, challenge the action of the Inland Revenue on the ground that there is no *prima facie* case for action. The directors' written statement and a written counter-statement on behalf of the Inland Revenue are considered by the Board of Referees which can either uphold the directors' contention or rule that a *prima facie* case exists, in which latter event the company's ordinary right of appeal still remains open to it.

- (2) Where the Special Commissioners have heard and decided an appeal against a surtax direction concerning the undistributed income of a controlled company, either the Revenue or the company may require the appeal to be reheard de novo by the Board of Referees.

In any such proceedings, it may be a crucial question as to whether the company's actual distributions were reasonable, taking account of its business requirements, including those necessary or advisable for maintenance and development. The Board of Referees has the function of bringing to bear on problems of this character a wider practical knowledge of business conditions than the Special Commissioners possess.

For this reason there are eighty-odd members of the Board of Referees, appointed by the Treasury from persons experienced in industrial and commercial affairs. The Board, located in London, has jurisdiction over the entire United Kingdom. The members act without remuneration but there are three salaried positions: a part-time chairman, appointed by the Lord Chancellor from the ranks of senior barristers, a deputy chairman for Scotland, and a salaried registrar. Each case is considered by a small panel presided over by the chairman. The members of a given panel are selected by the chairman, account being taken of special expertise they may possess regarding the particular industry with which the given company is associated.

4.2d *Organization of the 1960 Act tribunal*

As discussed in Chapter XVIII, 2.7 *supra*, legislation passed in 1960 empowered the Board of Inland Revenue to counter certain avoidance devices designed, through manipulation of securities held, to secure a tax advantage analogous to that sought through bond-washing and dividend-stripping operations. There was, however, no intention to penalize a transaction where it could be shown that it was carried out "for bona fide commercial reasons," the obtaining of tax advantages not being a main object. Parliament tried to avoid impeding normal business transactions by setting up an arrangement which enabled taxpayers to seek prior clearance for prospective transactions, and by creating special rights of appeal to a new body—the so-called 1960 Act tribunal.

The functions given this tribunal, with respect to avoidance through manipulation of securities, resemble closely those of the Board of Referees in the surtax area:

- (1) When a taxpayer is notified that the Inland Revenue is contemplating counter-action under the relevant section of the 1960 Act, he may submit to the tribunal a written statement seeking a summary ruling that there is no prima facie case for counter-action. If the tribunal so rules on the basis of both the taxpayer's statement and any written counter-statement by the Revenue, the Revenue cannot then proceed any further in the matter. If, however, the tribunal does not so rule, the taxpayer still retains his normal right of appeal against the counter-action proposed by the Revenue.
- (2) The exercise of that right of appeal will result in a hearing by the Special Commissioners. When such an appeal has been decided by the Special Commissioners, however, either the Revenue or the taxpayer may require the appeal to be reheard de novo by the new tribunal.

The 1960 Act tribunal has a further function. As discussed in Chapter XVIII, 2.7 *supra*, an earlier act of 1951, designed to prevent profits tax avoidance, gave the Inland Revenue a right to counter-action. The same act gave the taxpayer a right to appeal such counter-action to the Special Commissioners. When the 1960 Act tribunal was created, the opportunity was taken to provide an additional right of appeal under the 1951 statute. On demand of either the Inland Revenue or the taxpayer, the new tribunal must undertake a rehearing de novo of any future appeals.

The 1960 Act tribunal is a single authority for the entire United Kingdom. Its ex officio chairman is the chairman of the Board of Referees: he is assisted by two or more members appointed by the Lord Chancellor on the basis of their "special knowledge of and experience in financial or commercial matters."

4.3a *Processing appeals: The General Commissioners*

In Chapter XIX, 3.3 *supra*, the point was made that the taxpayer's easy access to convenient appeal tribunals independent of the Inland Revenue Department had removed any need for a formal system of administrative appeals within the Department itself. The access is very easy indeed. No special formalities precede an appeal to the General Commissioners. The taxpayer notifies the Inland Revenue that he intends to appeal and indicates, in a general way at least, the grounds of his appeal.

Payment of the tax in dispute is not a precondition of the taxpayer's right to a hearing. Indeed, if an appeal against an assessment is pending, collection of the contested tax is suspended until after the appeal is determined.⁷

The Commissioners who hear an appeal against an assessment (income tax, profits tax, or surtax) have authority to increase or reduce it, depending on the evidence. In keeping with this principle, once an appellant invokes their jurisdiction, he cannot withdraw his appeal without the consent of the Inland Revenue. Because of this ability to withdraw—subject to consent from Inland Revenue—not every appeal of which notice has been given goes forward to an actual hearing. In addition, the law specifically provides that if the appellant and a representative of Inland Revenue can agree as to the proper resolution of the dispute between them,⁸ effect may be given to that agreement as if it were a formal determination by the appeal Commissioners. Statistics are not available to show precisely what proportion of all appeals are disposed of ultimately by agreement rather than by decision, but there can be no doubt that the great majority are resolved by such agreement. In fact this is the normal result in certain types of cases, such as those where an Inspector relied on an estimated assessment of trading profits because the business accounts were not available

⁷Of course, the portion of the assessment not disputed must be paid.

⁸The Income Tax Act, § 510 (1), provides as follows: "Subject to the provision of this section, where a person gives notice of appeal to the General Commissioners, the Special Commissioners or the Board of Referees against an assessment, or a decision of any kind with respect to income tax other than surtax or surtax, and, before the appeal is determined by the Commissioners or Board, the surveyor or other proper officer of the Crown and the appellant come to an agreement, whether in writing or otherwise, that the assessment or decision should be treated as upheld without variation, or as varied in a particular manner or as discharged or cancelled, the like consequences shall ensue for all purposes as would have ensued if, at the time when the agreement was come to, the Commissioners or Board had determined the appeal and had upheld the assessment or decision, without variation, had varied it in that manner or had discharged or cancelled it, as the case may be." However, it must be stressed that the phrase "varied in a particular manner" does not carry the connotation of settlement in the sense of adjustment or compromise. It means, for example, that where both parties come to an agreement that the assessment or decision was in error—as determined by a closer scrutiny of the point or points in issue—in one or more aspects, an alteration will be made to take account of such an error.

to him at the time when the assessment had to be made. Where there is undue delay in producing the accounts, the Inspector may ask the Commissioners to arrange an interlocutory hearing so the taxpayer can be questioned regarding the reason for delay and warned that the Commissioners, at a later hearing, may confirm the estimated assessment if the accounts are not produced within some reasonable time limit which they specify. Such a warning is often sufficient to get a delay case moving again.

In the small minority of cases where, following notice of appeal, issues of fact or law emerge which cannot be settled by negotiation, the District Inspector in charge of the local Tax Office has full authority to decide when to terminate the negotiations and allow the appeal to go forward for hearing. He has no obligation to notify headquarters of appeals that are going forward, though he might do so in a particular case, for example, where he previously had sought advice from a headquarters specialist.

In nearly all appeals heard by General Commissioners, the Inland Revenue's case is presented by the District Inspector or one of the other Inspectors assisting him in the local Tax Office.⁹ In appeals of special significance, however, a member of the London or Edinburgh Solicitor's Office may represent the Department.¹⁰

Taxpayers are entitled to present their appeals in person and many do so. It is quite usual, however, for taxpayers to be represented by a professional adviser—an accountant or solicitor or, more rarely, a barrister.

There are no written rules of procedure governing the hearings, which tend to be informal, especially if the taxpayer is appearing without the assistance of a professional adviser. The degree of informality varies from one division to another, however, depending on the particular views of the local Commissioners. The parties are not required to file formal petitions or other documents, but it is not uncommon for the two sides to draw up an agreed statement of facts to reduce the ground to be covered in the oral evidence at the hearing.

In a typical appeal, the hearing is opened on behalf of the appellant, who may submit oral evidence himself and call

⁹ The representation of the Department of Inland Revenue at appeals hearings is one of the matters covered in the training course for members of the Inspectorate. See Chap. XVII, 1.5 *supra*.

¹⁰ Members of the Solicitors' Offices in both London and Edinburgh are trained lawyers.

witnesses. To the extent appropriate, he and his witnesses are cross-examined by the representative of the Inland Revenue and then re-examined. The Inland Revenue's case follows: if any witnesses are called on behalf of the Inland Revenue, they too are subject to examination. The appellant's reply follows.

There is no simple answer to the question, which party must shoulder the burden of proof. With respect to construction of the statutory provision applicable to a particular case, as distinct from ascertainment of the actual facts to which the law must be applied, the general rule is that the Inland Revenue must show that the item it claims to be taxable does come within the scope of the words imposing liability. On the other hand, once it has been demonstrated that an item comes within a charging provision, a taxpayer who claims the benefit of a relief provision must show that the latter provision does embrace his case. As to questions of fact, normal rules associated with other litigation apply, absent special circumstances.

The Commissioners usually announce their decision immediately after the hearing, though not infrequently they take time for consideration and later communicate their decision to the parties in writing. The content of their decision, i.e., whether it includes the reasoning they employed in reaching the result or simply notes that the assessment is confirmed, discharged, or modified (or that the claim to relief is allowed or refused), depends on the discretion of the Commissioners and varies with the circumstances of the case.

Excluding the delay cases previously described, the 700 sets of General Commissioners decide about seven or eight thousand appeals each year. The hearings are private; also, the proceedings and decisions are not reported. Hence, these decisions have no precedent value. Further, in theory, the decision the Commissioners reach on an appeal for a given year is not *res judicata* should the same taxpayer appeal to the same set of Commissioners on a similar question as to a later year. As a practical matter, however, a local Tax Office no doubt will attribute some significance to a General Commissioners' decision when a later appeal on a similar point arises in the same division.

4.3b Processing appeals: The Special Commissioners

In hearing appeals falling within their jurisdiction, the Special Commissioners exercise virtually the same powers and functions as General Commissioners. The description just given regarding procedures before the General Commissioners

is equally applicable to the processing of appeals before the Special Commissioners, with certain qualifications.

A surtax appeal may be settled by negotiation as readily as an appeal relating to income tax or the profits tax. While the taxpayer's adversary is the Surtax Office, not a local Inspector of Taxes, the prime difference lies in the matter of representation. The Surtax Office staff does not present the Inland Revenue's case at the oral hearing should one prove necessary. On a surtax appeal, the London or Edinburgh Solicitor's Office represents the Inland Revenue. But on income or profits tax appeals to the Special Commissioners, typically either an Inspector from the appropriate local Tax Office or a member of one of the Solicitors' Offices will represent the government—as was true in the case of appeals to the General Commissioners. There is, however, one further alternative here; sometimes the Special Appeals Section of the Chief Inspector's Office presents the Department's case.¹¹ Further, taxpayers themselves are much more likely to be represented by professional advisers, including barristers, before the Special Commissioners than before the General Commissioners. For that reason the proceedings tend to be somewhat more formal. The number of cases in which the Special Commissioners reserve judgment at the close of a hearing and later give a reasoned determination in writing also is proportionately greater.

Excluding cases in Northern Ireland where Special Commissioners also take the place of General Commissioners, between two and three thousand appeals are dealt with annually by Special Commissioners. This figure, however, includes a considerable number of delay cases where the hearing is little more than a formality. The number of appeals in other than delay cases probably can be put at less than one thousand.

4.3c *Processing appeals: The Board of Referees*

Attention previously has been drawn to the privilege accorded a closely-held company threatened with action under the legislation dealing with unreasonable retention of profits. The company can ask the Board of Referees for a summary ruling that no prima facie case for such action exists. Oral hearings are not held. The company's directors simply submit a written statement setting forth the facts and circumstances on which they rely in requesting the ruling. The Inland Revenue has a

¹¹See Chap. XVII, 1.2 *supra*.

limited period to transmit this statement to the Board of Referees, together with a written counter-statement setting forth its competing view. The Board of Referees then circulates the documents among the chairman (in Scottish cases, the deputy chairman) and the panel of five members chosen because of their relevant experience in industry. The members send their respective written opinions to the chairman (or deputy chairman). Usually, on the basis of the written opinions, he is able, without a formal meeting of the members, to announce the Board's determination.

The Board of Referees has a second function under the same legislation: to rehear *de novo* certain surtax appeals arising when either party thereto is dissatisfied with the Special Commissioners' decision. The dissatisfied party must submit within a limited period a concise statement of the facts and the grounds on which this further appeal is based. The respondent party then submits a counter-statement. If any question of fact is in dispute the chairman, at a meeting with the parties, provides directions as to proof and procedure and fixes a time by which the copies of documents intended to be used at the rehearing must be in the hands of the Board's registrar. By statute, the Board of Referees has the same authority at the rehearing as the Special Commissioners had at the original hearing, though otherwise the tax code does not prescribe the procedures to be followed. In practice, the rehearing is heard by the chairman (in Scotland, the deputy chairman) and four members chosen from the panel. And the procedures generally are similar to those followed at the original hearing before the Special Commissioners. For example, as in other surtax appeals, a member of the London or Edinburgh Solicitor's Office presents the Inland Revenue case.

In recent years from ten to twenty cases are handled annually under the summary procedure described in the second preceding paragraph. Rehearings have been much more infrequent. Over one recent four-year period for which statistics are available, only one rehearing took place.

4.3d Processing appeals: The 1960 Act tribunal

Like the Board of Referees (with which it shares a chairman), the 1960 Act tribunal has a double role: it handles written applications for summary rulings where the Inland Revenue has threatened counter-action under the legislation dealing with securities' manipulation, and it rehears appeals originally determined by the Special Commissioners where the Inland Revenue

has taken counter-action. During its first three years, no re-hearings took place. The tribunal, however, had dealt with fifteen cases under the summary procedure, some involving applications by more than one taxpayer. Since that procedure is very similar *mutatis mutandis* to the corresponding procedure adopted under the surtax legislation, it will not be described further here.

Section B. *Organization and Procedures: Appellate Tribunals*

4.4 *Organization of the appellate court system*

The United Kingdom tax code provides that the decisions of any of the independent bodies described in the previous Section are subject to review, but only as to questions of law, before the regular superior courts of the country. Thus, either party has a right of appeal to a court from appeal decisions of the General or Special Commissioners and also from decisions rendered by the specialized tribunals after rehearing cases originally heard by Special Commissioners.¹²

It is otherwise, however, in the case of the summary procedure by which the Board of Referees and the 1960 Act tribunal can be asked in the first instance for a ruling to terminate Inland Revenue's threatened action under the relevant special legislation. This summary procedure was designed to enable companies (or other taxpayers affected) to test quickly and before an expert independent tribunal their asserted grounds for believing that the special legislation should not be applied. As already indicated, a summary ruling in the taxpayer's favor is conclusive against further action by the Inland Revenue. Indeed, in keeping with the limited purpose for which the procedure was designed, such rulings are not subject to any form of appeal.

The particular court which exercises appellate jurisdiction varies from one part of the United Kingdom to another:

- (1) In England and Wales, jurisdiction rests with the Chancery Division of the High Court of Judicature, sitting in London. Proceedings take place before a single judge of that Division; his decision may be appealed,

¹²This right of appeal to a higher court extends also to cases where a Northern Ireland taxpayer has elected to have his appeal heard by the local county court instead of by the Special Commissioners.

- however, to the Court of Appeal, in which event normally three judges sit.
- (2) In Scottish cases, jurisdiction rests with the Court of Session, sitting in Edinburgh, and is exercised by one of the Divisions of the Inner House, usually with three or four judges hearing the case.
 - (3) In Northern Ireland, jurisdiction rests with the Court of Appeal of Northern Ireland, normally with three judges sitting together.

Throughout the United Kingdom, there is a final appeal (assuming leave is obtained, if necessary) to the House of Lords sitting in its judicial capacity as the supreme court of appeal in civil matters for the entire United Kingdom. Up to five members of the House commonly sit together on tax appeals. These regular courts treat tax litigation as one part of all the varied business which comes before them. Because they are courts of general jurisdiction, their judges do not specialize in tax matters.¹³

4.5 *Processing cases through the courts*

The right of appeal to a court is limited by statute to questions of law, the decision of the trial tribunal being final as to questions of fact. In addition to questions of fact where the prime issue is one of substantiation, questions such as whether a given course of activity involved carrying on a trade or whether, given the periods and circumstances of an individual's presence in the United Kingdom, he became a resident, are deemed essentially to be questions of fact. On the other hand, it is a question of law whether the evidence before the trial body justified it in drawing the inferences of fact upon which it relied in reaching its final decision. If a court concludes there was insufficient evidence on which the tribunal reasonably could reach the conclusion it did, the reviewing court would feel free to reverse.

While the taxpayer's right of appeal to the courts is not conditioned formally on his prior payment of the tax outstanding, the tax code does provide that the tax is payable on the basis determined by the trial tribunal notwithstanding any appeal to a court. Therefore, the Inland Revenue can enforce

¹³It is possible, of course, that a particular judge, did specialize in tax matters as a barrister, before his elevation to the bench.

collection while an appeal is pending. Tax paid while an appeal is pending would be refunded, however, to the extent appropriate, should the court modify the trial tribunal's determination. The taxpayer may, and occasionally does, choose to appear in person to argue his own case; but if he is represented by an adviser, he must employ the type of lawyer who has the right to appear before the court in question—that is, a barrister in England, Wales, or Northern Ireland, and advocate in Scotland.¹⁴

When General or Special Commissioners or one of the specialized bodies decides an appeal against the Inland Revenue, should the officer who represented the Department at the appeal hearing believe further appeal to a court is advisable, he could refer the matter to the Board's secretariat. To enable the Board to decide whether to authorize resort to the courts, the secretariat consults the Chief Inspector's Office in income tax and profits tax cases or the Surtax Office in surtax cases. The secretariat wants to learn whether these offices feel that the decision in question is completely unacceptable or whether they dislike the decision but do not consider it worth contesting, illustratively because of the unlikelihood that a similar fact situation will reoccur or whether they feel they can live with the decision. Sometimes, of course, these offices will urge that the decision be appealed, even though an adverse decision on appeal is anticipated, as the resulting clarification of the law will permit the introduction of remedial legislation. In short, the secretariat consults these offices to discover the administrative reaction. For purely legal questions, the secretariat has recourse to the Solicitors' Offices, though time pressures involved in the secretariat's decision whether or not to appeal may well prevent such consultation at this early stage.

Where appeal to a court is authorized, the Board and secretariat keep in touch with subsequent progress of the case. Inland Revenue's actual representative in court will be a barrister or advocate, but the secretariat represent the Department in a lay capacity, communicating with the barrister or advocate through the appropriate Solicitor's Office. The latter office, however, prepares the brief for the barrister or advocate who represents the Department in court. And if a particular member of the Solicitor's Office handled a given case before the trial tribunal, he typically handles the brief on appeal.

¹⁴ Advocates also may appear before the House of Lords on appeals from the Scottish Court of Session.

But the key document in appealing to a court is the so-called stated Case prepared by the trial body itself. On giving due notice and paying the prescribed fee, either the taxpayer or the Inland Revenue can obtain from the trial tribunal this written statement setting out the facts of the case and the tribunal's decision thereon. Documents produced in evidence can be annexed to the stated Case as exhibits. The Case normally is drafted in the first instance by members of the trial tribunal (or, in the case of General Commissioners, by their clerk). It usually is sent in draft form to the parties for their comments and suggestions, but the trial tribunal which states the Case bears the ultimate responsibility.

The actual court proceedings center around the stated Case. During the oral argument—an integral part of all court proceedings in tax controversies—the appellant's representative advances oral arguments in opposition to the conclusions reached by the trial tribunal. The respondent's representative, also orally, supports it. The court commonly delivers an oral opinion. In simple cases heard by a single judge, the decision is delivered at the end of the trial. In more complicated cases, especially those heard by the full panel of three judges, there may be a delay of several days. In either case, a full transcript is made available. The judgment by the court sets out fully the legal reasoning in support of its decision.

The number of tax appeals—income, profits, or surtax—brought before all United Kingdom courts varies from year to year, but twenty-five is an average annual figure. All the decisions, together with the stated Cases, are published officially.

The precedent effect of court decisions can be summarized as follows:

- (1) The House of Lords is bound only by its own decisions. Its decision binds all lower courts.
- (2) The Court of Appeal (England and Wales), the Court of Session, and the Court of Appeal of Northern Ireland are bound by their own respective decisions. Each of these three courts treats the decisions of one of the others with great respect. While not strictly bound to follow them, divergency comes with considerable reluctance.
- (3) A judge of the Chancery Division is bound to follow a decision by the House of Lords or the Court of Appeal

(England and Wales). He is not strictly bound by a decision of the Court of Session or the Court of Appeal of Northern Ireland, but in practice almost certainly would follow it, especially where the earlier decision was unanimous.

Any member of the accounting and legal professions concerned with tax matters will pay close attention to all court decisions. If a given appeal is decided adversely to the Inland Revenue in a court of first instance and no further appeal is taken to a higher court, this generally is taken to mean that, in the absence of a statutory amendment, the Department will follow the principle of the adverse decision. However, a single decision may not always establish the precise limits of that principle's applicability. Thus, a decision not to appeal does not exclude the possibility of further litigation involving a somewhat similar but not identical situation. The Inland Revenue, however, does not follow the practice of publishing statements as to the presumed range of court decisions.