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Readers' forum : Man of letters

Tax liability concerning the sale to a library of a published author's archive of papers.

My client is an established author, publisher, literary critic, historian, poet and editor, who in 2017-18 sold his archive to a library. The archive included:

- typescripts and publisher proofs of books written by the client;
- notebooks, including drafted works that have and have not been published;
- manuscripts of books that have not been printed;
- correspondence with the client's mother covering a considerable period of time;
- ephemera of various kinds relating to the client's career as a writer, including reading materials, posters, invitations; and
- personal correspondence relating to the client's work.

Most of the above material was self-generated by my client, augmented by correspondence from family, friends, editors and acquaintances. The library acquired the archive because all the material is deemed to be of potential interest to individuals studying contemporary literature. The actual sale has had no effect on my client's income streams and no copyrights were involved.

In my client's opinion, the sale of the archive cannot be counted as 'normal' authorial income and it appears that some of his acquaintances have made similar sales and have been advised that no tax was chargeable on their disposals.

I am not convinced that the sale is entirely tax-free but would welcome readers' views on the matter. And, if tax is indeed an issue, whether it is income tax or capital gains tax that is in point.

Query 19,185– Literati.

Reply by Steve Kesby

What constitutes income in the context of the profession of an author is considered in HMRC's *Business Income Manual* at BIM50705. This says that the outright sale of copyright is a trading income receipt rather than a capital receipt. It also cites the case of *Wain's Executors v Cameron (HMIT)* 67 TC 324 in support of the department's assertion that the sale of manuscripts is part of the income of the profession.

In fact, the *Wain* case probably goes even further to assist Literati. It describes a practice that emanated from the University of Texas, whereby academic institutions, public libraries and private collectors sought to acquire from well-known authors their worksheets, notebooks, draft manuscripts and correspondence.

From about 1955, Professor Wain began to retain these items and made them available as a collection on loan first to Reading public library and later to the library of the University of Edinburgh to which the collection was later sold. The collection was described by the Special Commissioners as comprising notebooks, working papers and manuscripts covering book introductions, book reviews, radio broadcasts, essays, lectures, monographs, drama, novels, short stories and poetry. The case report also notes that Professor Wain had previously sold to a dealer a letter to him from Ernest Hemingway, indicating the proceeds were treated as a receipt of Wain's profession as an author.

The Special Commissioners held the receipts from the collection to be taxable as receipts of Wain's profession, a decision subsequently upheld in the High Court. Harman J concluded that 'the exploitation by the taxpayer of anything produced in the course of his profession is taxable as a profit of the profession' except 'where, on the facts, it can be shown that what was produced was not in the course of the profession'.

Other than the correspondence with the client's mother, the articles to which Literati refers would seem to fall within the ambit of this conclusion.

The correspondence with the client's mother may be personal chattels within the charge to capital gains tax, and the small chattels exemption may apply. However, this correspondence may fall to be treated as a set for the purposes of the small chattels exemption.

Reply by Pete Miller, The Miller Partnership

The conservative position would be to treat all of the proceeds of the transaction as the income of Literati's client.

This suggestion is on the basis of *Wain's Executors v Cameron* 67 TC 324. This is a 1995 case concerning an author and academic who sold his archive to Edinburgh University. The High Court judge considered that the items sold were 'produced in the course of and as part of the professional activity' and the realisation of the archive items was 'part of the fruits of that profession'. Since all the items were produced during his activities as an author, the sale of the items, including various chattels, was simply income of his profession, and not a capital receipt.

I have taken a similar view in assessing the tax consequences of a similar transaction in the past few years.

I am aware from discussions with colleagues that the chattels exemption could be applied to particular physical assets. It seems to me entirely right to say that the sale of something like the typewriter that an individual used should qualify for that exemption. I understand, however, that the exemption has been successfully claimed for other physical assets, such as notebooks and computer disks.

I am not sure whether this treatment was ever queried by HMRC, but it does highlight what, to me, is a potentially interesting distinction between the fruits of the profession as an author and the way in which those are physically recorded.

In another case I worked on, it was noted that the sale agreement included the sale of future rights, title and interests in intellectual property, including copyrights. In my view, this meant that, in effect, the author concerned had sold the entire profit-making apparatus of the profession, which had much more the flavour of a capital transaction.

We believe that at least a substantial proportion of the proceeds represented a capital receipt and that entrepreneurs' relief should have been available for the gain.

Reply by Thicket

The taxation of authors is anomalous because case law has determined that the fruits of their words, whether produced by pen, typewriter, or computer, is taxed as income irrespective of whether the sale involves the disposal of an entire asset (such as the sale of copyright).

The circumstances described bear a strong resemblance to the case of *Wain's Executors v Cameron* [1995] STC 555. Mr Wain was an author who had deposited his papers including manuscripts, drafts, with Edinburgh University. When he was short of money while writing a book, he negotiated to sell the papers to the University. HMRC assessed the proceeds to income tax and although he died before the case could be heard, the High Court decided that exploitation by an author of anything produced in the course of his profession is taxable as a profit of the profession.

HMRC certainly take this view as expressed in its *Business Income Manual* at BIM35735. The proceeds of sale of everything the client has written – in other words, the product of his creative talents – are taxable. This would include the typescripts, proofs, notebooks, manuscripts and suchlike. There may be an argument that proceeds of personal correspondence unrelated to his work as an author should be excluded, but that would seem to represent a small part of the total value of the archive.

TCGA 1992, s 37 prevents capital treatment if the consideration is already subject to income tax. This would prevent using capital gains tax reliefs such as 'chattels relief' to potentially reduce any tax which might be due. Taken together, I share the Literati's conviction that the sale is not tax free.

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