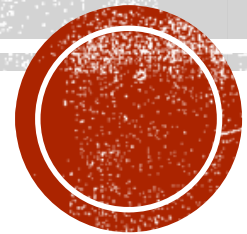


# PROCEEDING IN CERTAINTY

Tax rulings

David W Marks QC



# COMPLEXITY



# RANGE OF ABILITIES/NEEDS

- Large agency
- Broad reach of tax system
- Large range of abilities of taxpayers & advisers

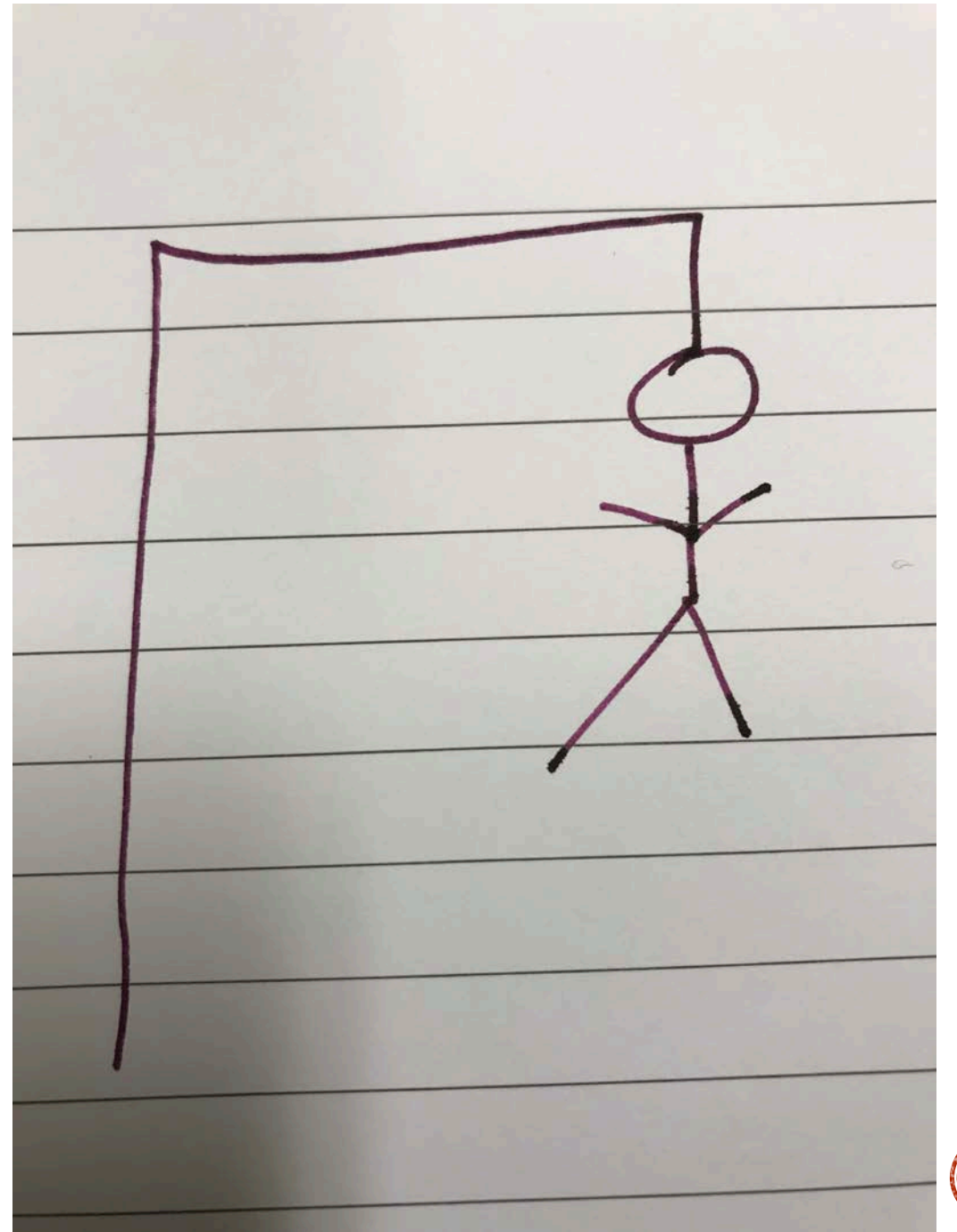


# RETREAT FROM ASSESSMENT

- Self-assessment long been the norm
- Need a way to obtain assurance about agency's views



# PENALTIES



# TRANSACTION IN PROGRESS

- Bellinz - Merkel J
- Whether a transaction can proceed



# CENTRALITY OF “SCHEME”

- When ruling “applies”
- Consequence of ruling applying
- Departure from scheme



# STATING THE SCHEME IN RULING APPLICATION

- Evidential vs ultimate facts
- Narrative “scheme” and masses of evidential facts
- Temptation for agency to investigate (go outside) narrative or disclosed documents to find other “facts”
- Management of process





# DEPARTING FROM SCHEME

- During objection process
- During review or appeal
- Consequences for each party – eg Rosgoe 2015 ATC ¶20-539 (Commissioner)
- Usefulness of a ruling on a controversial “scheme”



# LIMITED OPTIONS FOR COMMISSIONER

- If dissatisfied with way the “scheme” is stated, what to do?
- Practically how it is handled
- What to do if practical measures of re-stating scheme are rejected
  
- Current litigation: Hacon 2017 ATC ¶20-624



# SUGGESTED WAY FORWARD

- Need for a system giving high assurance, under self-assessment
- Whether it needs to be as complex as the PBR system
- Possible modification to PBR system to permit:
  - Commissioner to find facts and use them more easily
  - Flexibility during the objection, and the review or appeal process
  - Clarity where the Commissioner decides to find a fact, which is controversial
  - Clarity where the Commissioner finds for good reason that he cannot or should not comply with a request

