

[05-01-16] Employment Inducement Payments

Reviewed February 2017

Reference material Tax Briefing Issue 32 (June 1998)

1. Introduction

Where a payment is made to an individual as an inducement to take up employment, such a payment represents a taxable emolument under *Section 112 of the Taxes Consolidation Act 1997*.

Therefore, for the purposes of the PAYE system, any payment made to an individual as an inducement to take up employment is liable to tax. Accordingly, income tax/USC must be deducted at the time of payment.

Revenue's position is supported by case law. Section 2 summarises the outcome in the the case of *Hamblett v Godfrey*.

The decisions in two UK tax cases and an Irish tax case are summarised in the Appendix . These summaries are for reference only and readers are recommended to read the full text of the judgement.

2. Income arising from employment

Hamblett v Godfrey [1987 STC 60]

Following the decision in the case of *Hochstrasser v Mayes* case [38 TC 673], that inducement payments are not payments arising from an office or employment, that decision was re-visited in the leading case of *Hamblett v Godfrey* [1987 STC 60] which held that emoluments were not restricted to payments made by an employer in return for the performance of the duties of an office or employment.

Delivering his decision, Purchas LJ stated

"The real issue in this appeal is not, in fact, whether the £1,000 is an emolument or not. It is accepted that it is an emolument, but the question is whether it is an emolument arising from the employment. The payment is rightly to be assessed under Schedule E."

Neill LJ stated

"the payment to the taxpayer was made in return for her being and continuing to be an employee at GCHQ, or to use the words of Viscount Simonds, 'the payment accrued to the taxpayer by virtue of her employment' I have been driven to the conclusion that the source of the payment was the employment. It

05-01-16

was paid because of the employment and because of the changes in the conditions of the employment and for no other reason. It was referable to the employment and to nothing else. Accordingly, in my judgement, the £1,000 was a taxable emolument."

Appendix

1 UK Tax Cases

1.1 *Glanre Engineering Ltd v Goodhand (Inspector of Taxes) 1983 STC 1*

Summary

An offer of employment included a lump sum payment of £10,000 “as an inducement” to the individual to leave his old firm and take up employment with Glanre Engineering Ltd. The Inspector determined that the payment was an emolument and that determination was appealed by the company. The company contended that the payment was not something in the nature of a reward for services past, present or future, but something to compensate the individual for his loss attendant on the occurrence and as a necessary and ancillary aspect of his leaving the firm in order to put himself in a position to take up employment with the taxpayer company.

Decision

It was held that the payment was chargeable to tax under Schedule E as an emolument arising from the taxpayer’s employment.

Comment

In his judgement, Warner J, made the following comment:

“I cannot hold that, in the present case, the only reasonable conclusion to be drawn from the evidence before the Special Commissioners was, as contended by counsel for the taxpayer company, that the payment of £10,000 to Mr Wells was severable from the other benefits to which he became entitled under the agreement between himself and the company, and was other than an added inducement to him to change his job and enter the full time employment of the company. If it was the latter, it was, so it seems to me, an emolument from that employment within the meaning of Schedule E.”

1.2 *Shilton v Wilmshurst (Inspector of Taxes) 1991 STC 88*

Summary

An individual was employed by Nottingham Forest Football Club. They agreed to transfer him to Southampton Football Club, subject to his consent. The manager of Nottingham Forest had indicated to him that should he agree terms of employment with Southampton, Nottingham Forest might be willing to make a payment to him for consenting to the transfer. He agreed terms and so consented. Nottingham Forest then paid him £75,000 for so consenting. The Inspector assessed him to tax under Schedule E on the £75,000.

Decision

Held that emoluments were not confined to “emoluments from the employer”, but embraced all “emoluments from employment”. “It applied to emoluments paid as an inducement to enter into a contract of employment and to perform services in the future.

Emoluments “from employment” meant “from being or becoming an employee”.

Comment

A separate payment of £80,000 was made by Southampton to the taxpayer, as an inducement to enter into a contract of employment under which he would perform services for them for the following four years. It had already been accepted that this payment was an emolument “from becoming an employee”.

Lord Templeman in his judgement said

“The £75,000 paid by Nottingham Forest was also an inducement to the taxpayer to enter into a contract of employment under which he would perform services for Southampton for the next 4 years. This motive does not alter the fact that the £75,000 paid by Nottingham Forest was an emolument ‘from employment’ because it was an emolument ‘from becoming an employee’ indistinguishable from the £80,000 paid by Southampton for the like purpose. In the present case Nottingham Forest paid £75,000 as an emolument in return for the taxpayer agreeing to act as or become an employee of Southampton and for no other reason. The taxpayer accepted the emolument of £75,000 in return for agreeing to act as or become an employee of Southampton just as he accepted £80,000 from Southampton for the same reason. The taxation consequences to the taxpayer should be and are the same.”

2. Irish Tax Case

Extract from Tax Briefing Issue 44 (June 2001)

Case: Patrick J. O'Connell (Inspector of Taxes) v Thomas Keleghan

Points at issue

- (i) Whether an inducement payment was assessable to tax under Schedule E.
- (ii) Whether the redemption of a loan note, which had been acquired for shares in a "paper for paper" exchange, was to be treated as a disposal of the original shares and whether the loan note was a "debt on a security".

Decision made by: The Supreme Court

Decision Date: 16 May 2001

Relevant Legislation:

- (i) Section 112 of the Taxes Consolidation Act 1997
- (ii) Sections 584 to 586 of the Taxes Consolidation Act 1997
- (iii) Section 541 of the Taxes Consolidation Act 1997

Summary of Supreme Court decision:

- (i) The payment was found to be assessable under Schedule E.
- (ii) The asset realised by way of redemption was, in law, as it was in fact, a disposition of the loan note. The loan note was found not to be a "debt on a security".