



**TC01413**

**Appeal number TC/2010/09002**

*Income tax-s18(Earnings and Pension) Act 2003- was an employed earner entitled to payment when the work was done or only in accordance with the terms of his contract – ie on the 6<sup>th</sup> of the month following-found the latter date applied-appeal dismissed.*

**FIRST-TIER TRIBUNAL**

**TAX**

**EDWARD FOUNTAIN**

**Appellant**

**- and -**

**THE COMMISSIONERS FOR HER MAJESTY'S  
REVENUE AND CUSTOMS**

**Respondents**

**TRIBUNAL: B J King (Tribunal Judge)  
W Snowdon (Lay member)**

**Sitting in public at North Shields on 2 June 2011**

**Mr E Fountain the Appellant appeared in person**

**Mrs R Oliver, an officer of H M Revenue and Customs, appeared for the Respondents**

## DECISION

### The issue

1. The issue in this case concerned whether Mr Edward Fountain was liable to pay tax, in the tax year 2007-08, on earnings paid to him on 7 April 2007 by Ian Farmer Associates. .
2. Mr Fountain argued that the payment made on 7 April 2007 was for work which he had carried out during March 2007. He believed he was entitled to the money as soon as the work was done and therefore he should be liable to tax on it in the tax year 2006-07.
3. HMRC argued that Mr Fountain had signed a contract with Ian Farmer Associates on 7 November 2002 in which he had agreed that he would be paid *'monthly in arrears on the 6<sup>th</sup> of the month'*. HMRC therefore argue that Mr Fountain only became entitled to the payment made on 6 April 2007, on that day.

### 15 The Law

4. S 18 Income Tax (Earnings and Pensions) Act 2003 provides that.

(1) General earnings consisting of money are to be treated for the purposes of this Chapter as received at the earliest of the following times-

#### Rule 1

- 20 The time when payment is made of or on account of the earnings.

#### Rule 2

The time when a person becomes entitled to payment of or on account of the earnings

### 25 The Evidence

5. Mr Fountain confirmed that he had entered into the contract which he had signed on 7 November 2002 and that there had been no variation of the term of the contract. He agreed that if the decision of the Tribunal had to be based on the fact that he had agreed in November 2002 that he would be paid on the 6<sup>th</sup> day of the month in arrears then the only decision which could be made by the Tribunal was that he only became entitled to payment on that day each month.
6. Mr Fountain believes that Ian Farmer Associates may have chosen to make payment to their employees on the 6<sup>th</sup> day of the month in order that they could ease their cash flow in 2002 or that they had some other ulterior motive for putting the 6<sup>th</sup> of the month in the contract. He asked the Tribunal to rule that this was unfair on Mr Fountain. The Tax Tribunal has no jurisdiction over whether a contract between an individual and his employer is fair. HMRC were not a party to the contract in November 2002. There is no evidence that the contract signed in November 2002 is in

contravention of any tax law. The terms of that contract cannot be changed by a Tax Tribunal.

### **Findings of fact by the Tribunal**

5 7. Mr Fountain entered into a contract on 7 November 2002 in which he agreed that he would be paid monthly in arrears on the 6<sup>th</sup> day of the month. At all material times the contract remained in force and therefore Mr Fountain only became entitled to the payment he received on 6 April 2007, on that day and not before.

### **The decision**

10 8. The decision that the appeal was dismissed was announced orally by the Tribunal at the hearing. It was not possible to issue a written decision at the time and Mr Fountain was asked whether he wished to have

- (1) a decision which contained a short summary of the reasons for the decision
- (2) a decision contains full facts and reasons
- (3) a decision containing only the decision but no facts or reasons.

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9. The Tribunal thought that Mr Fountain had agreed orally that he did not wish to have any reasons in the written decision to be issued to him. It appears from his subsequent letters that Mr Fountain has not taken in what was said to him at the end of the hearing. He has now asked for full written findings of fact and reasons for the decision. This is the full decision. It too is short because the only finding of fact which needed to be made to support the decision is the finding in paragraph 7 above and Mr Fountain agreed it. The decision remains the same as is set out in paragraph 1 of the short decision:-

25 **The Tribunal decided that the Appellant only became entitled to payment from Ian Farmer Associates, for work done in the month of March 2007, on 6 April 2007. The payment made on that date therefore falls to be included in Appellant's income for the tax year 2007-08.**

30 10. After the decision was announced Mrs Oliver pointed out that Mr Fountain had asked for Susan Kenyon, an officer of HMRC, to be present and Mr Fountain had not called her as a witness. Mrs Oliver was not asking for a wasted costs order in respect of the attendance by Susan Kenyon. There had been no witness summons for her to attend. She had not been involved in the agreement which Mr Fountain had entered into in November 2002. The Tribunal considered that it had not been necessary for Susan Kenyon to be called to give oral evidence in order for the Tribunal to be able to make its decision.

35 11. Mr Fountain contends that interest should not be added to any tax which he has not yet paid for the tax year 2007-08. HMRC have a statutory right to add interest to

outstanding tax. There is no right of appeal against the addition of interest and the Tribunal can make no ruling concerning this.

12. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to “Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)” which accompanies and forms part of this decision notice.

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**B J King**

**TRIBUNAL JUDGE**

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**RELEASE DATE: 24 August 2011**

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