



TC02020

Appeal number: TC/2011/04695

Income tax – Appellant sub-postmaster receiving termination payment on closure of sub-post office business – tax treatment of termination payment received- whether compensation in respect of capital outlay on setting up business and loss of revenue - no- whether appellant’s role as sub-postmaster was an “office” for purposes of s5 ITEPA- yes - whether payment compensation for loss of office for the purposes of s401 ITEPA and taxable under s403 ITEPA - yes

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

MRS IBIJOKE O OWOLABI

Appellant

- and -

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

Respondents

**TRIBUNAL: JUDGE SWAMI RAGHAVAN
ANTHONY HUGHES**

Sitting in public at Bedford Square, London on 15 February 2012

There was no appearance by or on behalf of the Appellant

Mr Jon Davis of HM Revenue and Customs, for the Respondents

DECISION

Introduction

5 1. This appeal relates to the tax treatment of a compensation payment of £74,177 from Post Office Limited to the appellant Mrs Owolabi, in the tax year 2008-9. The payment was made as part of the Post Office Network Change Programme and was in respect of the closure of the post office which the appellant ran.

10 2. The appellant argues the payment was for compensation for loss of her business and that the amount received was partly capital and partly revenue.

3. HMRC argue the payment was for compensation for loss of an office and that, subject to an exemption of £30,000 the payment counts as employment income of the Appellant under s 401 Income Tax (Earnings and Pensions) Act 2003 (“ITEPA”).

15 *Hearing the appeal in the absence of the Appellant*

4. The appellant was not present at the hearing. The Tribunal’s file showed that notice of the hearing had been sent to the appellant on 21 December 2011. There was no indication the appellant had tried to contact the Tribunal to ask for a postponement prior to the hearing. Shortly before the hearing was due to begin the clerk telephoned
20 the appellant and reported that the appellant had given her apologies and would not be attending due to child care issues. In the circumstances the Tribunal considered Rule 33 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 and was satisfied that the Appellant had been notified of the hearing and that it was in the interests of justice to proceed with the hearing.

25 *Evidence*

5. HMRC provided a bundle of documents, which included correspondence between the appellant and HMRC in relation to the appeal, copies of documents provided to the appellant in relation to the closure of her branch, and a copy of document entitled “Brief Summary of certain sections of the sub-postmasters’
30 contract for services”. After the hearing it became apparent to the Tribunal that the date of the payment in issue stated in correspondence between HMRC and the appellant was at odds with the chronology suggested by other documents and both parties were given the opportunity to clarify the date of payment. We received from HMRC a copy of an e-mail from an Agent Recruitment and Remuneration Manager at
35 Post Office Limited explaining that the previously stated date of 8 April 2008 was incorrect (it was in fact the date a tax code had been entered onto the payroll system) and that the date the payment was received was at the end of June 2008. The appellant was sent a copy of the e-mail and given the opportunity to make comments.

40 *Background and Facts*

6. The appellant purchased the Foots Cray Post Office in Sidcup in 2003. She carried on the business of that branch from 7 November 2003.

7. The business had been in existence as far back as 1964 and was passed on from one sub-postmaster to another by means of sale and purchase of the business and premises.

8. The appellant was not an employee of Post Office Limited but had contracted to provide premises and post office services to Post Office Limited.

9. On 2 May 2008 Post Office Limited wrote to inform her that a decision had been taken to close her branch. The letter included a closure and compensation pack.

10. In relation to compensation the pack stated:

“2.Compensation

2.1 Post Office Ltd offers you compensation by of a discretionary payment for your loss of office (“the Compensation”). The payment of Compensation is not a requirement of the Contract and will be solely as determined by Post Office Ltd.

The Compensation will either be the Maximum Compensation or the Standard Compensation as described below.”

11. The Standard Compensation applied in the event the appellant chose not to accept a shorter notice period of not less than four weeks. The amount was £68,878.81 and was “based on the average monthly remuneration figure of £2,649.19 (taken from the 2004-5 financial year), multiplied by 26 months.” The Maximum Compensation amount of £74,177.18 applied if the appellant chose to accept the shorter notice period and was stated to be the Standard Compensation figure with the addition of two months of the average monthly remuneration figure specified (i.e. 28 months in total).

12. In the event the appellant completed a reply slip dated 7 May 2008. She chose the Maximum Compensation figure offered of £74,177 and accepted her contract would terminate on 17 June 2008.

13. The appellant received the compensation payment of £74,177 at the end of June 2008.

14. The appellant did not include the compensation payment as taxable income on her 2008-9 tax return.

15. HMRC opened an enquiry into the return. The only matter in issue was the compensation payment.

16. The enquiry was concluded on 2 March 2011 and concluded the compensation payment was chargeable to tax.

17. The appellant appealed on 31 March 2011 and asked HMRC to carry out a statutory review. The review was completed on 25 May 2011 and upheld the decision that compensation payment was taxable.

Law

Relevant provisions of ITEPA in 2008-9

5 Section 401(1) ITEPA:

“This Chapter applies to payments and other benefits which are received directly or indirectly in consideration or in consequence of, or otherwise in connection with –

- (a) the termination of a person's employment,
 - 10 (b) a change in the duties of a person's employment, or
 - (c) a change in the earnings from a person's employment,
- by the person, or the person's spouse, blood relative, dependant or personal representatives.”

15 Section 403(1) ITEPA:

“The amount of a payment or benefit to which this Chapter applies counts as employment income of the employee or former employee for the relevant tax year if and to the extent that it exceeds the £30,000 threshold.”

20 Section 5 ITEPA provided as follows:

“(1) The provisions of the employment income Parts that are expressed to apply to employments apply equally to offices, unless otherwise indicated.

- 25 (2) In those provisions as they apply to an office –
 - (a) references to being employed are to being the holder of the office;
 - (b) “employee” means the office-holder;
 - (c) “employer” means the person under whom the office-
- 30 holder holds office.

(3) In the employment income Parts “office” includes in particular any position which has an existence independent of the person who holds it and may be filled by successive holders.”

35 18. We were referred to the following cases:

Decision of the Social Security Commissioner in respect of “Mrs G” [CFC/20/1991]

Cude v HMRC [2010] UKFTT 424 (TC)

Uppal v HMRC [2010] UKFTT 215 (TC)

40 *Bimson v HMRC* [2010] UKFTT 484 (TC)

R&C Commissioners v Basharat (unreported – ref CH/2007/APP/0761).

Appellant's arguments

5 19. In the absence of the appellant we asked Mr Davis to take us through the points which the appellant had made in correspondence and in her notice of appeal.

20. In her notice of appeal dated 21 June 2011 the appellant stated the following grounds of appeal:

10 “The amount of £74,177 paid was for loss of business. The business was purchased in 2003 for £50,000 to meet the conditions required as a sub postmaster. Part of the conditions required as a sub postmaster were:

- a. purchase of business
- b. purchase of lease of premises from current sub postmaster
- 15 c. repair to outlet where business was carried out among other conditions.

Thus the amount received was partly capital and partly revenue.”

20 21. The Appellant went on in her form to ask for a decision that “Fifty-Three (53%) of the compensation received should be in respect of loss of business and Forty-Seven (47%) as loss of remuneration.”

22. The appellant had elaborated on these arguments in an earlier letter of 21 November 2010 to HMRC, and Mr Davis satisfied us that the main contents of that letter were excerpted into HMRC’s review letter of 25 May 2011. This stated:

25 “The business has been in existence as far back as 1964. Registered under the land registration Act (1925-1936). See attached document of a registration in 1970 (business was stated as Sub Post Office and Stationers). Business passes on from one subpostmaster to another by means of purchasing and selling of a business and premises where business is carried on.”

30 “The Compulsory Closure therefore is the final Disposal/Cessation/Sale of the said business referred to as Footscray Post Office, 3 Holly Tree Parade, Footscray. DA14 6JR. The receipt is the final settlement for all obligations regarding the said business. This
35 business has passed from hand to hand since its registration and was purchased in 2003 by myself. However due to a Compulsory Order it was closed/disposed as in a sale.”

40 23. She stated she paid £50,000 to purchase the business and £9,250 to improve the premises (new lighting, suspended ceilings, new frontage and electric shutters.) She also had to discharge an obligation on a long term lease, this was in respect of half of the remaining term unexpired and amounted to £15,600 for the period from July 2008 to 2010. The total cost of disposal was £74,850.

24. The appellant's list of the documents she intended to rely on referred to the following (these were not available at the hearing):

- (1) Pre-appointment letters from Post Office Ltd.
- (2) Conditions of Appointment letter from Post Office
- 5 (3) Notification of sale letter from previous business owner
- (4) Purchase documents
- (5) Documents showing business income pre and post acquisition.

HMRC's arguments

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25. HMRC argued that while the appellant was not an employee of the Post Office, her role of sub-postmaster entailed her holding an office for the purposes of s5 ITEPA.

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26. Support for this was to be drawn from a Social Security Commissioner decision which had considered whether the position of sub-postmaster was an office under s2(1)(a) Social Security Act 1975 and the fact that the Foots Cray Post Office had, since coming into existence in 1964, a succession of sub-postmasters. The appellant was engaged by the Post Office as holder of the office of sub-postmaster.

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27. The payment was made to the appellant as compensation for the loss of her office and was chargeable to income tax by virtue of s 401(1) ITEPA and s 5 ITEPA. This contention was based on the notification sent to the appellant from Post Office Limited which stated that the offer of compensation was by way of discretionary payment for her loss of office.

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28. This was consistent with the 3 cases before the First-tier Tribunal on the tax treatment of compensation paid by Post Office Limited to sub-postmasters in similar circumstances and in which the Tribunal had refused the appellants' appeals and found the whole payment to fall within s 401 and s 403 of ITEPA. There was a further case before the General Commissioners, *Basharat*, where while HMRC lost the appeal, following HMRC's appeal to the High Court, the High Court found the General Commissioners were wrong to find that only part of the compensation

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29. The First-tier Tribunal case of *Bimson* was submitted to be the one which was closest on its facts to the present case. There, the judge was asked to consider whether any element of the compensation payment should be excluded because it related to costs of setting up the business and converting the premises to accommodate a Post Office and had concluded that the whole of the sum was compensation for loss of office.

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Discussion

30. The Tribunal must consider whether the payment received by the Appellant was a payment received “directly or indirectly in consideration or in consequence of, or otherwise in connection with” the termination of an office. If it is not then we must consider what the nature of the payment is.

31. Before we can consider that issue, we must reach a view on whether the appellant’s role as sub-postmaster was an office.

Was the role an office?

32. Under s 5(3) ITEPA the definition of office “ includes in particular any position which has an existence independent of the person who holds it and may be filled by successive holders”. We considered the “Mrs G” Social Security Commissioner decision. While useful by way of background we noted the Social Security Commissioner, although he dealt briefly with the issue of whether the position of sub post master as described to him in that case was an office, had stated that that issue was not necessary for his decision.

33. Taking account however of the summary of the sub postmaster’s contract shown to us and the statements made in the appellant’s correspondence that the post office had been in existence since 1964 and that there had since then been a succession of sub postmasters, we find that the position of sub postmaster of the Foots Cray post office was an “office” under s 5(3) ITEPA in that it had an existence independent of the person who held it and was filled by successive holders.

Was the payment in connection with the loss of office?

34. Having established that the appellant’s position was an “office” the next question we must consider is whether the payment was “directly or indirectly in consideration or in consequence of, or otherwise in connection with” the termination of the office.

35. We were referred to a number of decisions at First-tier Tribunal level which, it was suggested to us, dealt with similar payments in similar circumstances, and where the Tribunal had found that the payment fell within s 401 / s 403 ITEPA. While we were grateful to be referred to those, we are mindful that they are at best only of persuasive authority and that we must approach the issue in this appeal on the facts and evidence before us. We were also referred to the High Court decision in *Basharat* but in common with the comments of the First-tier Tribunal in its decision in [34] of *Uppal* we found it difficult to draw any wider principle from the decision given the limited information about the facts and issues in that case.

36. We were referred by HMRC to Post Office Limited’s Closure and compensation pack which we found to be referable to the payment in question and the reference in it to the offer of compensation being by way of a “discretionary payment for your [the

appellant's] loss of office". We were also asked to note that this document explained that compensation figure was calculated on the basis of a multiple of the average monthly remuneration figure taken from the 2004-5 financial year. The multiple depended on the amount of notice period the appellant accepted.

5 37. The terms in which the person making the payment describes the payment cannot in our view be conclusive of whether the payment falls within s401(1) ITEPA but it is nevertheless in our view a factor which is relevant to the question of whether the payment falls within that provision.

10 38. We were on the one hand invited by HMRC to take note of the method of calculation being based on remuneration but also on the other to look at an HMRC note on compensation payments to sub-postmasters under the Network Reinvention Scheme which maintains that how the amount of compensation is calculated cannot determine the character of the payment itself. We were of the view that similar to the point on the significance of way the payment was described, the method of
15 calculation, while not determinative is not irrelevant either.

39. Having concluded that the appellant held an office, and in the absence of any evidence to suggest that the payment was not that as described by Post Office Limited, namely a payment for the appellant's loss of office we find that the payment received by the appellant was a payment "directly or indirectly in consideration or in
20 consequence of, or otherwise in connection with" the termination of the appellant's office and therefore a payment which fell within s 401(1)(a) ITEPA.

40. We understand the appellant, through her grounds of appeal and correspondence, to be maintaining that the payment was at least in part a payment of capital and was compensation the expenditure she had incurred in buying the business
25 and making adaptations to the premises. We have no reason to doubt that the appellant did incur costs in buying the business and making adaptations and she would, if she had attended, quite probably have taken us through the documents on her list of documents related to those. But there was no evidence before us around the circumstances of the payment showing the payment to have had the character of
30 something other than compensation for loss of office. We do not consider the fact of there having been expenditure of the type described by the appellant would serve to displace our view that the payment was in connection with the termination of an office.

41. The Tribunal therefore considers HMRC's amendment to the appellant's self-
35 assessment for the year ended 5 April 2009 to be correct, and accordingly the appeal is dismissed.

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42. 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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**SWAMI RAGHAVAN
TRIBUNAL JUDGE**

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RELEASE DATE: 11 May 2012