



**TC 04957**

**Appeal number: TC/2015/02651**

*INCOME TAX – yacht purchased in company name - was half owned by director-no-was asset made available to director-yes-benefit in kind calculated under s205 ITEPA- national insurance contributions payable by company- appeal dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**BLUE YEARNINGS LIMITED**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE BARBARA KING  
CHRISTINE OWEN**

**Sitting in public at Leeds on 2 March 2016**

**George Cook, accountant, for the Appellant**

**Gill Carwardine, of HM Revenue and Customs, for the Respondents**

## DECISION

1. This is an appeal against a decision by HMRC issued on 7 November 2014 that Blue Yearnings Limited are liable to pay Class 1 National insurance contributions of £9,459 for the period 6 April 2011 to 5 April 2014 in connection with the private use of a yacht called "Space Race".

### **The issue**

2. Blue Yearnings Limited claims that 50% of "Space Race" is owned by Jonathan Blanshard, the sole director of Blue Yearnings Limited and that as his private use of "Space Race does not exceed 50% there is no benefit in kind to Mr Blanshard. HMRC contend that the whole of Space Race is owned by Blue Yearnings Limited ("the company") and that national insurance contributions fall to be paid in accordance with section 205 ITEPA.

### **The law**

3. Section 205 Income Tax ( Earnings and Pensions) Act 2003 ('ITEPA') is as follows :

"Cost of the benefit: asset made available without transfer"

- (1) The cost of an employment-related benefit("the taxable benefit") is determined in accordance with this section if-

(a) the benefit consists in –

(i) an asset being placed at the disposal of the employee, or at the disposal of a member of the employee's family or household, for the employee's or member's use or...

(ii) an asset being used wholly or partly for the purposes of the employee or a member of the employee's family or household, and

(b) there is no transfer of the property in the asset.

(2) The cost of the taxable benefit is the higher of-

(a) The annual value of the use of the asset, and

(b) The annual amount of the sums, if any, paid by those providing the benefit by way of rent or hire charge for the asset, together with the amount of any additional expenses.

(3) For the purposes of Subsection (2), the annual value of the use of an asset is-

(a) in the case of land, its annual rental value:

(b) in any other case, 20% of the market value of the asset at the time when those providing the taxable benefit first applied the asset in the

provision of an employment-related benefit (whether or not the person provided with that benefit is also the person provided with the tax benefit).

5 If those providing the taxable benefit first applied the asset in the provision of an employment-related benefit before 6 April 1980, paragraph (b) is to be read as if the reference to 20% were a reference to 10%.

10 (4) In this section “additional expense” means the expense incurred in or in connection with provision of the taxable benefit (including a proper proportion of any expense relating partly to provision of the benefit and partly to other matters), other than-

(a) The expense of acquiring or producing the asset incurred by the person to whom the asset belongs, and

15 (b) Any rent of hire charge payable for the asset by those providing the asset.

### **Evidence**

4. Mr Cook gave evidence that he is a chartered accountant who acted for Mr Blanshard for many years in connection with his private tax returns. In approximately  
20 early 2011 Mr Blanshard told Mr Cook that he intended to purchase a yacht and Mr Cook assisted Mr Blanshard to acquire the company Blue Yearnings Limited. Mr Blanshard indicated that he would do the bookwork for the company himself. Mr Cook was not then involved in the financial running of the company.

5. The bundle of evidence contained letters referring to the registration of Blue  
25 Yearnings Limited for VAT. Mr Cook stated that he was not involved in this correspondence.

6. In approximately Spring 2012 Mr Blanshard produced paperwork to Mr Cook to enable Mr Cook to draw up financial accounts for the company for the year ended 31 January 2012.

30 7. The paperwork provided to the Tribunal contained the following:

(1) An undated invoice recording the sale of “Space Race” for £60,000 plus VAT of £10,500 to Blue Yearnings Limited.

(2) An insurance policy for “Space Race” issued to Blue Yearnings Limited for the period 2 February 2011 to 2 February 2012.

35 (3) Company Accounts for Blue Yearnings limited for the year 25 January 2011 to 31 January 2012 which were signed by Mr Blanshard on 17 October 2012.

(4) Company Accounts for Blue Yearnings limited for the year 1 February 2012 to 31 January 2013 which were signed by Mr Blanshard on 17 October 2013.

5 (5) A summary of the total running costs of the yacht for the periods 2011/12 and 2012/13, said by Mr Cook to have been drawn up in approximately October 2013.

(6) A summary of the movements on Mr Blanshard's directors loan account for the periods 2011/12 and 2012/13, produced by Mr Cook from paperwork produced to him by Mr Blanshard.

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### **Discussion**

8. Mr Cook gave oral evidence that Mr Blanshard paid for the yacht entirely. He agreed that the accounts for the year ended 31 January 2012 show that the whole cost of the yacht is shown as a fixed asset of the company and that the accounts for that  
15 year show creditors for the full cost of the yacht and additional items purchased in connection with it. The creditor is Mr Blanshard as the sole director as he had paid for all the invoices in connection with running of the yacht.

9. Mr Cook believed that Mr Blanshard intended that the yacht should be owned half by Mr Blanshard and half by Blue Yearnings Limited. He did not know exactly  
20 when Mr Blanshard had formed this intention but believed that it was from the date of purchase of the yacht.

10. The Tribunal noted that Mr Cook's letter of 19 December 2012 suggests that it was only after correspondence in April 2012 from HMRC about a 50% split in VAT that it was decided to "split the ownership of the boat 50/50" and that the recharges to  
25 the directors loan account were not done until October 2013, after the enquiry had been opened by HMRC.

11. In respect of 'Capital Allowances' Mr Cook told the Tribunal that only half were claimed by the company. There was no evidence of this in the papers but HMRC did not dispute this. Mr Cook agreed that the claim of only a proportion of 'Capital  
30 Allowances' does not show that ownership is in the same proportion.

### **Findings**

12. The Tribunal find the invoice for 'Space Race' shows that it was addressed solely to Blue Yearning Limited. The insurance documentation shows that cover was provided from 2 February 2011. The accounts for the year ended 31 January 2012  
35 show that the whole of the value of 'Space Race' is an asset of the company and there is a corresponding creditor entry in the directors loan account for the money lent to the company to purchase the yacht and accessories.

13. The accounts for the year ended 31 January 2013 show an asset which has depreciated. This entry represents the whole of the value of the yacht 'Space Race'.

14. On balance we are satisfied that the whole of the value of the yacht was still being shown in the accounts for the year ended 31 January 2014 as an asset of Blue Yearnings Limited .

5 15. We therefore find that Space Race was, throughout the period from purchase in 2011 to the end of 31 January 2014, owned in its entirety by Blue Yearnings Limited. Mr Blanshard may have had the intention of owning half but he has not achieved this at any time in the period before us.

10 16. Mr Cook and HMRC agreed that the calculation of the benefit in kind as set out in the Statement of Case produced by HMRC for this appeal is correct. HMRC indicated that no action has yet been taken to recover personal tax due from Mr Blanshard in respect of his use of the yacht but that an enquiry will be opened. Matters to do with that decision are not before this Tribunal.

### **Decision**

15 17. Blue Yearnings Limited are liable to pay Class 1 National insurance contributions of £9,459 for the period 6 April 2011 to 5 April 2014 in connection with the private use of a yacht called “Space Race”. The appeal is dismissed.

20 18. 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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**BARBARA KING  
TRIBUNAL JUDGE**

**RELEASE DATE: 8 MARCH 2016**

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