



TC01460

Appeal number: TC/2010/08720

Income tax – Appellant sub postmistress receiving termination payment on closure of sub post office – was this compensation for loss of office for the purposes of Section 401 ITEPA – yes – appeal dismissed

FIRST-TIER TRIBUNAL

TAX

MRS RUTH ORME

Appellant

- and -

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

Respondents

**TRIBUNAL: S.M.G.RADFORD (TRIBUNAL JUDGE)
M.TEMPLEMAN**

Sitting in public at 8-10 Howard Street, Bedford MK40 3HS on 9 August 2011.

Mr J. Orme for the Appellant

Mr A.D.Burke for the Respondents

DECISION

1. This is an appeal against the taxation of a payment made to the Appellant in compensation for her loss of office as a sub-postmistress.

- 5 2. HMRC decided that after the £30,000 exemption under Section 403 of the Income Tax (Earnings and Pensions) Act 2003 (“ITEPA”) the balance was taxable under Section 401 of ITEPA.

Background and facts

10 3. The Appellant purchased the Huttons business in August 1976. It comprised a newsagent, tobacconist and confectioners with the sub post office attached.

4. In November 2008 the Post Office decided to close the Appellant's sub post office.

5. On closure of the sub post office a payment was made to the Appellant of £75,589.86.

15 6. The Appellant included the compensation payment in the profit and loss account of the business for the year to 8 August 2009 and her tax return for the year 2009/10. It is significant that the amount included was after deduction of the first £30,000.

20 7. Where a retail trade or business within the scope of Case 1 Schedule D has been carried on from the same premises as a sub post office the remuneration of the sub postmistress can in practice be included with the income of her private trade and accordingly assessed under schedule D. This was the situation in the Appellant's case.

8. HMRC grant this concession to simplify the tax affairs of the sub postmistress. It is a long held concession which means that salary from the Post Office could be included in the business accounts.

25 9. On 6 August 2010 HMRC opened an enquiry into the Appellant's 2008/2009 self-assessment return and explained that this was being done because there was an omission of a payment received from the Post Office.

30 10. HMRC decided that the payment was compensation for loss of office and should not have been included with the income of the Appellant's private trade. After deduction of the £30,000 tax free amount HMRC accordingly decided that £45,589.86 of the payment should be taxed in the tax year ending 5 April 2009. This led to the tax due in respect of the Appellant's self assessment being increased to £23,571.87.

11. Mr Orme stated that this amount was in any event incorrect and should be £23,491.87 and HMRC appeared to agree.

35 12. To ensure that all compensation payments were assessed correctly the Post Office supplied full details of all compensation payments made to sub postmasters and mistresses to HMRC.

13. As a result of this HMRC sent a statement of advice to the sub postmasters and mistresses. In addition the National Federation of Sub postmasters made the information available on their website and may have included it in their periodical.

5 14. The Appellant however did not receive either the statement from HMRC or access the advice from the National Federation.

Legislation

15. Section 5 of ITEPA states:

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

10 (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-holder holds office.

15 16. Section 401 of ITEPA states:

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,

20 (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.

17. Section 403 of ITEPA states:

25 (1) 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.

(2) In this section “relevant tax year” means the tax year in which the payment or other benefit is received.

30 (3) For the purposes of this Chapter—

(a) a cash benefit is treated as received—

(i) when it is paid or a payment is made on account of it, or

(ii) when the recipient becomes entitled to require payment of or on account of it, and

35 (b) a non-cash benefit is treated as received when it is used or enjoyed.

Appellant's Submissions

18. Mr Orme confirmed that the Appellant had not received any notice from HMRC concerning the payment and he had just treated the payment as income and included it in the Appellant's Schedule D income as he had been doing since the business was acquired without having previously received any queries from HMRC concerning this treatment.

19. He contended that HMRC should have ensured that the Appellant received the notice. Additionally by effectively moving the compensation payment back into the previous tax year instead of 2009/10 the Appellant now fell into the higher rate tax bracket.

20. He contended that had he known that the payment was to be taxed as compensation and not included in the business accounts he would have ensured that the Appellant put the payment into her pension scheme thus avoiding the higher rate of tax.

21. Mr Orme submitted that the enquiry had been opened more than a year after the submission of the 2008/09 tax return. The Appellant's return for that year had been posted to HMRC on 21 July 2009 and was received by them on 24 July 2009.

22. In conclusion Mr Orme stated that the Appellant had filed her tax return in exactly the same way as she had done for the last thirty-two years and if there was to be a change then she should have been so informed by HMRC.

HMRC's Submissions

23. Mr Burke confirmed that whilst the salary of a sub postmistress could by concession be included in the profits of a trade and taxed under Schedule D this did not apply to compensation payments for loss of office.

24. The position of sub postmistress was considered an office and accordingly the compensation payment was taxable under Section 401 of ITEPA by virtue of Section 5 of ITEPA subject to the first £30,000 which was tax free.

25. The Appellant's tax return was received on 23 July 2009 and under Section 9 of the Taxes Management Act 1970 ("TMA") HMRC has twelve months from that date to check the return. If this date is passed however Section 29 TMA allows the return to be checked if there is a "discovery".

26. Mr Burke referred to the decisions in the cases of *Basil Bimson v HMRC* [2010] UKFTT and *Anthony Cude v HMRC* [2010] UKFTT both of which found that compensation payments in the similar circumstances were assessable under Section 401 of ITEPA.

Findings

27. The Tribunal found that the payment had been correctly assessed under Section 401 of ITEPA.

5 28. The Tribunal found that HMRC had correctly decided that the Appellant held an office.

29. The Tribunal found that HMRC had correctly opened the enquiry having “discovered” that the payment had been incorrectly included in the profits of the Appellant’s trade.

10 30. The Tribunal found Mr Orme’s evidence to be truthful but whilst the Tribunal had sympathy with the Appellant who had not received the notice from HMRC and hence fallen into the higher rate of tax for the relevant year, the Tribunal found that this would be a matter for the HMRC complaints department or the Revenue Adjudicator.

Decision

15 31. The appeal is dismissed.

32. 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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TRIBUNAL JUDGE

RELEASE DATE: 7 September 2011

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