

Glasgow Rangers – the "Big Tax Case"

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RFC 2012 Plc (in liquidation) (formerly The Rangers Football Club Plc) (Appellant) v Advocate General for Scotland (Respondent) (Scotland) [2017] UKSC 45

The Supreme Court has ruled in favour of HM Revenue & Customs (**HMRC**) in the long-running dispute over the use of an employee benefit trust (**EBT**) arrangement by the company which formerly owned Glasgow Rangers Football Club (**Rangers**), before it entered into liquidation in 2012. The dispute has commonly come to be known as the "Big Tax Case".

Background

The essence of the arrangement was that Rangers paid monies into the EBT and further into various sub-trusts for the benefit of players and other senior figures within the club. Loans to the total value of around £47m were then made out from the sub-trusts to over 80 players and other staff between 2001 and 2010. The loans were never repaid.

HMRC challenged the tax status of this arrangement on the basis that such loans were, in reality, forms of disguised remuneration. Based on the legislation in place at the time, the approach had the effect of avoiding the PAYE and NIC deductions which would have been applicable if the payments were classed as "salaries" or "wages".

The HMRC challenge went through the tax tribunal system, with both the First Tier Tribunal in 2012 and the Upper Tribunal in 2014 finding in Rangers' favour on the basis that the payments could not be classed as "emoluments" or "earnings" under the legislation in force at the time. This was because the players and other employees had no "absolute legal entitlement" to the money and that repayment of the loans could be demanded at any time.

In 2015 an appeal to the Court of Session overturned the First Tier Tribunal and the Upper Tribunal verdicts and found in favour of HMRC, ruling that the payments made under the EBTs were indeed taxable earnings as they derived from employment.

The Appeal

In March 2016, BDO LLP as RFC 2012 plc's liquidators, won the right to appeal against the Court of Session ruling. However, on 5 July 2017, the Supreme Court unanimously dismissed the appeal.

The appeal raised a fundamental question about the nature of the income tax charge on employment income namely whether an employee's remuneration is taxable as his or her emoluments or earnings when it is paid to a third party in circumstances in which the employee had no prior entitlement to receive it himself or herself.

The court took the view that the charge to tax on income extends to money that the employee is entitled to have paid as remuneration irrespective of whether it is paid directly to the employee or to a third party: *"Thus, if an employee enters into a contract or contracts with an employer which provide that he will receive a salary of £X and that as part of his remuneration the employer will also pay £Y to the employee's spouse or aunt Agatha, I can ascertain no statutory purpose for taxing the former but not the latter."*

Accordingly, it was deemed that payments by Rangers to the EBT should have been subject to deduction of income tax at source under the PAYE regulations.

In delivering the judgment, Lord Hodge stated that *"Parliament in enacting legislation for the taxation of emoluments or earnings from employment has sought to tax remuneration paid in money or money's worth. No persuasive rationale has been advanced for excluding from the scope of this tax charge remuneration in the form of money which the employee agrees should be paid to a third party, or where he arranges or acquiesces in a transaction to that effect. Having adopted this purposive construction of the legislation, I turn to apply it to the facts of this appeal."*

Given the Supreme Court's purposive view of the legislation, it is probable that HMRC will seek to utilise the decision in order to pursue other cases involving EBTs, employer financed retirement benefits schemes and employer loan schemes.

Following the judgment, David Richardson, interim director general of HMRC's customer compliance group, released a statement which called for employers who have made payments to employees through EBT arrangements to come forward: *"The unanimous decision of the Supreme Court supports our view that Employment Benefit Trust avoidance schemes simply do not work. This decision has wide-ranging implications for other avoidance cases and we encourage anyone who's tried to avoid tax on their earnings to now agree with us the tax owed. HMRC will always challenge contrived arrangements that try to deliver tax advantage never intended by Parliament."*

We expect that there will be many more settlements with HMRC as a result of the judgment and we can provide help and guidance in that regard.

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