TC04040

Appeal number: TC/2013/02851

PAYE – appeal against notice of coding for 2013-14 – effect of coding was that no tax was deducted – indeed HMRC appear to have issued the notice in order to secure that result – Notice expired at end of 2013-14 tax year in any event – Tribunal struck out appeal on basis that code had expired and had never resulted in any deduction of tax, accordingly no reasonable prospect of success – reinstatement of appeal applied for, on basis of belief that code in question had been "attached" to non-taxable injury benefit, but no suggestion that any deduction of tax had taken place as a result of the notice of coding – application for reinstatement refused

FIRST-TIER TRIBUNAL
TAX CHAMBER

PAULINE STEWART **Appellant**

-and-

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

TRIBUNAL: **JUDGE KEVIN POOLE**

Sitting in Chambers in Birmingham on 18 September 2014

DECISION

The history of this appeal

1. The Appellant delivered a bundle of miscellaneous correspondence to the Tribunal which was received on 22 April 2013. After lengthy and detailed evaluation, the Tribunal's Registrar considered that the bundle of documents could be regarded as amounting to a late appeal against a notice of coding issued to the Appellant on 17 March 2013. It was notified to HMRC as such on 10 June 2013, and allocated to the standard category.

2. HMRC replied to the Tribunal by letter dated 6 August 2013, stating that there had been parallel correspondence going on between them and the Appellant in relation to the notice of coding. HMRC had dealt with that correspondence as a complaint and their Chief Executive had written a letter to the Appellant's Member of Parliament, explaining the position. Broadly, as a result of legislative changes, HMRC had started to issue notices of coding to pension payers. In the Appellant's case, they had established that part of the pension paid to her was taxable (an amount subsequently established to be some £493 per year – the precise origin of which appears still not to have been clarified) but the bulk (subsequently established as some £15,000 per year) was exempt from tax. The reason for the exemption, it appears, was because it was a disablement pension (which is specifically exempted from income tax by what is now section 644 Income Tax (Earnings and Pensions) Act 2003).

3. HMRC considered that, as no further communication had been received in reply to their explanation, the Appellant had accepted it and therefore accepted the appropriateness of the code. They therefore applied for the appeal to be struck out.

4. The Appellant responded to this suggestion by confirming that she wished to continue with her appeal. HMRC therefore delivered their statement of case on 1 October 2013 and the Tribunal issued further Directions for the disposal of the appeal on 14 October 2013. In response to these routine Directions, the Appellant delivered a large volume of further correspondence to the Tribunal, which I attempted to make sense of and, as a result, the Tribunal wrote a letter dated 23 October 2013 to the Appellant on my instructions. That letter, apart from attempting to summarise my understanding of the position at that time, allowed an extension of time for compliance with the case management directions that had previously been issued. Further correspondence ensued thereafter up to January 2014 between HMRC and the Appellant, in which HMRC explained that the notice of coding did not have the effect of subjecting to tax the Appellant's disability pension. It merely ensured that a small other pension which was also paid through the same agency (Capita), which was believed to be a civil service pension (though that is now open to doubt), would be paid without deduction of tax. The effect of applying tax code 49T to an annual pension of £493 was that no tax would be deducted from it under the PAYE system.

5. The Appellant was still not satisfied with the position and contacted the Tribunal on 26 April 2014. The main issue preoccupying her at that stage was that

there was uncertainty about the origin of the £493 pension being paid to her (an uncertainty which, so far as the Tribunal is concerned, persists to this day). The payer of the pension considered it to be a Civil Service Pension whereas the Appellant maintains that she has never worked for the Civil Service (in particular, the Prison Service) but only for the National Health Service. She appeared to be suggesting that some part of her Disability Pension had been wrongly re-characterised as taxable occupational pension.

6. On 1 May 2014, HMRC wrote to the Tribunal, asking that the appeal be struck out, on the basis that the tax code under appeal had now expired.

7. On my instructions, the Tribunal wrote to the Appellant on 21 May 2014, explaining my understanding of the situation as follows:

> "It appears that HMRC wrote direct to Capita Hartshead and obtained information from them about the payments that were being made to you by them. In their letter to you dated 4 December 2013, HMRC referred to an attached copy of Capita's letter. No copy of Capita's letter was sent to us by HMRC, but from their summary of that letter, it appears that Capita are paying you a combination of non-taxable injury benefit (£15,198.88 for 2013-14) and potentially taxable pension (£493.48 for 2013-14). Because there is potentially taxable pension being paid to you, a notice of coding was issued for 2013-14, but the effect of that notice of coding was that you paid no tax (because the 49T code issued to you had the effect that the £493.38 pension that was potentially taxable was too low to trigger any actual tax deduction under that code).
>
> The net result for 2013-14 appears to have been that the effect of the code you wished to appeal against (49T) was that no deduction was made from either your injury benefit or your civil service pension. The year 2013-14 has now finished and therefore the correctness or otherwise of the code 49T that was applied is a matter of academic interest only; as it resulted in no tax deduction, there would not appear to be any substantive dispute between you and HMRC in which the Tribunal's intervention would be beneficial.
>
> It appears you may doubt the correctness of the way Capita say the payment to you is made up. It seems you may believe that the £493.38 is in fact an increase in your non-taxable injury benefit rather than a separate small pension which is potentially taxable. As the net result is that you appear to have suffered no tax on the payment, whatever its correct nature, there would not be any dispute for the Tribunal to adjudicate on – both you and HMRC appear to be saying that you have, as a matter of fact, paid no tax on any part of the payment to you from Capita; and any dispute about the correctness of tax code 49T for 2013-14 is now no longer relevant, as clearly that tax year has now ended so no further deductions could be made under that code.
>
> In the circumstances, the Judge does not consider that there still exists any relevant dispute over which the Tribunal has jurisdiction and he therefore asks me to say that he proposes to strike out this appeal and

> close the file unless representations are received from you in the next 28 days which satisfy him that there is in fact an ongoing dispute which falls properly within the scope of this appeal to the Tribunal.
>
> He asks me also to point out that this would not prevent you from raising a new appeal against any later disputed tax assessment or notice of coding for 2014-15 or later years."

8. The Appellant's response on 29 May 2014 was to submit some copy correspondence from 1997 which suggested that she was not entitled to any pension from HM Prison Service, and asked whether this meant that the prison department was lying in 1997. As the identity of the payer of the pension did not change my above analysis of the position, I issued the Direction dated 18 June 2014 to strike out the appeal. The Appellant now seeks to have the appeal reinstated.

9. The basis of her application is set out in her email dated 2 August 2014:

> "I have already sent you evidence which confirms that I would never get a pension from the Prison Service Paymaster (the letter was in 1997). It was sent to the POA. All I would get is an injury benefit which carried a NO TAX attached to it.
>
> As this letter proves I was never going to get a pension then the code no attached to my personal allowance is illegal as it has been attached it *[sic]* my injury benefit not a pension from the prison service. So the tribunal should remove the code no from my personal allowance. I will send you a full submission but I am still finding out why the HMRC have attached this code and where they got the information from, when it is clear that I was never going to get a pension from the prison service only the NHS as I was a nurse. I get approx £100 per month."

10. The Tribunal has since received a further email from the Appellant dated 27 August 2014 (which has been copied to a large number of recipients, including the Chancellor of the Exchequer, the Minister of Prisons and the Chief Executive of Capita Group. The bulk of this email is concerned with the confusion that exists in relation to the precise nature and origin of the £493 per annum received by the Appellant through Capita. It does not address the core issues which I consider to be relevant for the purposes of this decision.

Disposal of the application

11. The fact of the matter remains, as set out in my Strike-out Direction issued on 18 June 2014, that the disputed tax code has expired and there has been no suggestion from the Appellant that it has resulted in any deduction of tax.

12. The Appellant appears to be labouring under a continuing misunderstanding of the legal position. Her disability pension remains exempt from tax under section 644 Income Tax (Earnings and Pensions) Act 2003, and the issue of a notice of coding to the payer of the disability pension makes no difference to that exemption; even if, say, an emergency code had been issued which required the payer to deduct basic rate tax

from the entire payments made, that requirement would not apply in relation to the disability pension, which is wholly exempt from tax. That exemption does not however extend to any other occupational pension payment, whatever its origin. It is perhaps an unfortunate coincidence that the Appellant appears to be being paid her disability pension and another small pension by the same company (Capita), as a result of which HMRC are quite justified in issuing a notice of coding to Capita which could potentially result in PAYE being deducted from the non-disability pension part of the payment. That has not been the result in 2013-14, however (and indeed HMRC appear to have set the code specifically in order to ensure that no tax is deducted from the occupational pension payment, on the basis that the Appellant's personal allowance was expected to more than cover her entire taxable income for the year). It is important to understand that a notice of coding cannot require a deduction to be made from disability pension which is wholly exempt from tax.

13. In the circumstances, I remain of the view that there would be no reasonable prospect of the appeal succeeding and therefore the reinstatement application is REFUSED.

14. As has already been indicated, this does not preclude the Appellant from challenging her notice of coding for later years, but unless some wholly unexpected new circumstance arises, the point of doing so is highly questionable in a situation where the tax code is fixed specifically to ensure that no deduction of PAYE tax is actually made from the payments made to her. If the Appellant's suspicion is that the £493 being paid to her by Capita is in fact exempt from tax (e.g. as part payment of her disability pension) then if she can establish that fact, HMRC will no doubt issue an amended notice of coding to Capita which would require them to deduct PAYE tax from <u>all</u> taxable payments made to the Appellant (but in that case the end result would be the same, as the obligation to deduction would not extend to the £493 if it had been shown to be exempt from tax). It is only if the Appellant has other taxable earnings which take her above the personal allowance threshold that there might be other undesirable consequences of such a notice of coding.

15. 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.

KEVIN POOLE
TRIBUNAL JUDGE

RELEASE DATE: 30 September 2014