



5 July 2017

## PRESS SUMMARY

**RFC 2012 Plc (in liquidation) (formerly The Rangers Football Club Plc) (Appellant) v Advocate General for Scotland (Respondent) (Scotland) [2017] UKSC 45**  
*On appeal from [2015] CSIH 77*

**JUSTICES:** Lord Neuberger (President), Lady Hale (Deputy President), Lord Reed, Lord Carnwath, Lord Hodge

### BACKGROUND TO THE APPEAL

RFC 2012 Plc (“RFC”) was a member of a group of companies whose parent company was Murray International Holdings Ltd. By a deed dated 20 April 2001, Murray Group Management Ltd, which was also a member of the group, set up a trust known as the Remuneration Trust (“the Principal Trust”). When a group company wished to benefit an employee it made a payment to the Principal Trust. On payment, the employing company asked the trustee of the Principal Trust to resettle the sum on to a sub-trust and requested that the sub-trust income and capital should be applied in accordance with the employee’s wishes. The trustee of the Principal Trust had a discretion whether to comply with those requests, but, in practice, the trustee without exception created the requested sub-trust. The employee was appointed as protector of the sub-trust with the power to change its beneficiaries.

When RFC negotiated the engagement of a footballer, RFC would explain the sub-trust mechanism, in particular, that the prospective employee could obtain a loan of the sum paid to the sub-trust from its trustee which would be greater than the payment net of tax deducted under PAYE if he were to be paid through RFC’s payroll. The trust fund would be held for the benefit of the beneficiaries of the sub-trust, being members of the footballer’s family whom he specified. On the footballer’s death, the loans and interest would be repayable out of his estate, thereby reducing its value for Inheritance Tax purposes. RFC used the same mechanisms in paying discretionary bonuses to its senior executives.

The Income Tax (Earnings and Pensions Act) 2003 (“ITEPA”) governs RFC’s liability to income tax on employment income during the relevant tax years from 2003/04 to 2008/09. Section 6 imposes a tax on “general earnings”. Section 7 defines “general earnings” by reference to section 62. Section 62(2) provides “[E]arnings, in relation to an employment, means (a) Any salary, wages or fee, (b) Any gratuity or other profit or incidental benefit of any kind obtained by the employee if it is money or money’s worth, or (c) Anything else that constitutes an emolument of the employment”. The Income and Corporation Taxes Act 1988 (“ICTA”) applied in the tax years 2001/02 and 2002/003. The relevant provisions in ICTA, under which income tax is charged on “emoluments”, are essentially to the same effect as those in ITEPA.

In accordance with the Income Tax (Employments) Regulations 1993 and the Income Tax (Pay As You Earn) Regulations 2003 (“the PAYE Regulations”), employers who pay emoluments or earnings which are assessable to tax are required to deduct income tax from their payments to their employees under the “pay as you earn” (“PAYE”) regime. Under the PAYE Regulations, HM Revenue and Customs Commissioners determined that RFC had failed to pay income tax and National Insurance Contributions (“NICs”) on the sums paid to the trusts as remuneration. The parties to the appeal agreed that the determination of the appeal in relation to income tax governs the liability to NICs.

The First-tier Tribunal (“the FTT”) held that the scheme was effective in avoiding liability to income tax and NICs because the employees had only received a loan of the moneys paid to the trusts. The Upper Tribunal (Tax and Chancery Chamber) upheld the FTT’s decision. The Inner House allowed HMRC’s appeal. It held that income derived from an employee’s work is assessable to income tax, even if the employee agrees that it be redirected to a third party. The central issue in this appeal is whether it is necessary that the employee should himself or herself receive, or at least be entitled to receive, the remuneration for his or her work in order for that payment to amount to taxable earnings.

## JUDGMENT

The Supreme Court unanimously dismisses RFC’s appeal. Lord Hodge gives the judgment, with which the other Justices agree.

## REASONS FOR THE JUDGMENT

Three aspects of statutory interpretation are important in determining this appeal. First, provisions in the tax code imposing specific tax charges do not militate against the existence of a more general charge to tax which may have priority over or qualify the specific charge. Secondly, it is necessary to pay close attention to the statutory wording and not be distracted by judicial glosses which have enabled the court to apply the statutory words in other factual contexts. Thirdly, a purposive approach to the interpretation of the taxing provisions must be adopted [15].

As a general rule, 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 to the employee or to a third party [41]. The relevant ICTA and ITEPA provisions do not restrict the concept of earnings by requiring payment to a specific recipient [38]. Section 62(2)(b) ITEPA confines the charge on perquisites and profits to benefits received by the employee, but there is no such restriction in section 62(2)(a) or 62(2)(c) [49]. Nothing in the wider purpose of the legislation excludes from the tax charge remuneration which the employee is entitled to have paid to a third party [39]. Parliament has sought to tax remuneration paid in money or money’s worth. There is no rationale 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 [59].

For the purposes of PAYE it is necessary to determine whether there has been a payment of earnings from which deductions were required. Misplaced reliance on judicial glosses in relation to the concept of “payment” is evident in the case law leading up to the appeal [51]. There is no basis for establishing a general rule that a payment is made for the purposes of PAYE only if the money is paid to or at least placed unreservedly at the disposal of the employee [54]. The references to making a relevant payment “to an employee” or “other payee” in the PAYE Regulations fall to be construed as payment either to the employee or to the person to whom payment is made with the agreement of the employee [58].

The sums paid to the trustee of the Principal Trust for a footballer constituted the footballer’s earnings [64]. The risk that the trustee might not set up a sub-trust or give a loan of the sub-trust funds to the footballer does not alter the nature of the payments made to the trustee of the Principal Trust [65]. The discretionary bonuses made available to RFC’s employees through the same trust mechanisms also fall within the tax charge as these were given in respect of the employee’s work [66]. Payment to the Principal Trust should have been subject to deduction of income tax under the PAYE Regulations [67]. As the sums paid into the Principal Trust were earnings in the first place, the specific provisions of the tax code which deem the benefit of loans to be earnings cannot apply [69].

*References in square brackets are to paragraphs in the judgment*

## **NOTE**

**This summary is provided to assist in understanding the Court’s decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:**

<http://supremecourt.uk/decided-cases/index.html>