



**TC01911**

**Appeal number: TC/09/11141**

*Income tax - Post Office Network Reinvention Programme Closure Scheme - payment upon closure in connection with loss of office – Concessionary tax treatment for subpostmaster with retail business - s 401 Income Tax (Earning and Pensions) Act 2003 - no deduction other than s 403 – Appeal dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**BASIL BIMSON**

**Appellant**

**- and -**

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

**Respondents**

**TRIBUNAL: JUDGE ANNE SCOTT LL.B., NP  
MEMBER SCOTT A RAE LL.B., WS**

**Sitting in public at George House, 126 George Street, Edinburgh on Thursday  
15 March 2012**

**B Bimson, the Appellant**

**William Kelly, instructed by the General Counsel and Solicitor to HM Revenue  
and Customs, for the Respondents**

## DECISION

### Background and Preliminary Matters

- 5 1. Mr Bimson originally appealed an amendment dated 27 December 2007 to his Self Assessment for the year to 5 April 2006 whereby a compensation payment of £77,905.99 (less a deduction of £30,000), made under the Post Office Network Reinvention Programme Closure Scheme (the Closure Scheme) and received by Mr Bimson, was brought into charge to Income Tax as employment income.
- 10 2. The appeal against enquiry conclusions was on the basis "That the compensation payment is not solely for loss of earnings as per the Post Office Reinvention Scheme." That argument was rejected by HMRC and Mr Bimson appealed to the First-tier Tribunal.
- 15 3. That appeal was heard at 126 George Street, Edinburgh on 29 March 2010. Mr Bimson was represented by Mr M Hancock of Hancocks Accountants Ltd ("Hancocks"). HMRC was represented by Mr William Kelly, HM Inspector of Taxes. The material facts were not in dispute (see paragraphs 8 - 20 below).
- 20 4. A full Decision, refusing the appeal, was issued by that Tribunal on 21 April 2010. Mr Bimson appealed that and, although the application for a late appeal was not allowed, it was considered on 12 December 2011 by a differently constituted First-tier Tribunal which then set aside that decision. The basis for the set aside was that Mr Bimson had asserted that the original Tribunal had not had available to it information, dating back many years, that suggested that there was an agreement between the Post Office and HMRC to the effect that payments such as that which was the subject of the Appeal fell within Schedule D: he had produced  
25 amongst other items a letter from the Post Office to him dated 5 October 2011 (the October letter). The appeal was then remitted for re-hearing by a differently constituted Tribunal. This is the decision of that Tribunal.
- 30 5. On 29 February 2012 HMRC requested that the Proceedings be struck out in accordance with Rule 8(3)(c) of The Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (the Rules). In summary, the argument for HMRC was to the effect that that which was referred to in the October letter did not, and could not, amount to an agreement about taxation treatment of compensation payments under the Closure Scheme. Both parties were directed to make representations on the Strike  
35 out request immediately before the scheduled Hearing on 15 March 2012.
- 40 6. In terms of the Rules, a case can only be struck out if there is no reasonable prospect of the appellant's case succeeding. In this case, that meant not only the issues raised by Mr Bimson in regard to the October letter but also the underlying issues which had been the subject matter of the original appeal. Mr Bimson, who was no longer represented, opposed the application and after a brief submission, Mr Kelly for HMRC withdrew the application and invited the Tribunal to consider the substantive issues.

7. Although the terms Schedule D and Schedule E are no longer current, nor applicable, it was the terminology with which Mr Bimson was conversant and to which some of the correspondence, upon which he relied, referred. Further much of the case law used that terminology. Mr Kelly, very helpfully, suggested that the  
5 Hearing should use those terms. The current, and therefore correct, terminology and legislation are to be found in the Income Tax Trading and Other Income Act 2005 (ITTOIA) and the Income Tax (Earnings and Pensions) Act 2003 (ITEPA). Since the period when Mr Bimson was a sub postmaster straddles the change in legislation, this decision refers to Schedules D and E for clarity when describing his historic tax  
10 treatment and his arguments in the matter. Of course, the correct and current legislation is referred to and relied upon when giving the reasons for this decision.

### **The Agreed Facts**

8. At the outset of the Hearing the parties agreed the facts that had been narrated as material facts in the decision dated 21 April 2010. At that hearing no evidence had  
15 been led. Those facts were as follows:-

9. Mr Bimson ran a retail stationers business and Post Office from premises at Lowton St Mary's Post Office, Warrington. He traded as a limited company, B & S Bimson Ltd ("the Company") which was incorporated on 14 January 2000. Mr Bimson had been appointed as sub postmaster on 4 April 2000. At that time,  
20 Mr Bimson paid to the Post Office the sum of £21,879 net of VAT representing an introductory licence fee; and he also incurred costs of £25,121 in converting his premises to accommodate the Post Office facility.

10. Mr Bimson's remuneration from the Post Office was paid to the Company and included within the accounts for the Company. However, he was personally liable for  
25 Class 1 National Insurance Contributions in respect of the remuneration from the Post Office.

11. The Post Office Network Reinvention Closure Programme Scheme was Government funded. It was part of a highly publicised Network Reinvention Policy whereby Post Office Ltd aimed to close around one third of the urban Post Offices in  
30 the United Kingdom.

12. On 20 August 2004, Mr Bimson received an offer of compensation from Post Office Ltd to close his Post Office branch. For sub postmasters who had commenced after 31st March 1999, Post Office Ltd offered two methods of compensation, namely a fixed sum method in accordance with a sliding scale; and the alternative, a Business  
35 Value method. Mr Bimson chose the latter method of calculation.

13. Guidance was issued with the approval of the Department of Trade and Industry (DTI Guidance), to the effect that a compensation payment would represent in its entirety compensation for loss of office. That guidance was applicable to all payments made under the Closure Scheme.

40 14. The letter from Post Office Ltd to Mr Bimson dated 20 August 2004 included the following paragraphs:-

2.1 Subject to each of the circumstances listed in paragraph 1 above being satisfied, Post Office Ltd offers to pay to you on or about your last day of service £76,817.70, if a final decision is taken to close your branch. This sum represents compensation for loss of office, and all Post Office business must cease upon your last day of service....

2.3.1 .....you hereby (by means of your counter-signature at (A) below) give notice to Post Office Ltd of your resignation..... under your Contact,....

15 15. On 29 August 2005, the Post Office paid Mr Bimson £77,905.99 (the final payment) in compensation.

10 16. The cost to Mr Bimson on reconverting his premises was about £38,000.

17. No details of any compensation payments were shown on Mr Bimson's 2005-2006 Return, and on 9 July 2007 an Aspect Enquiry was opened by HMRC under the provisions of s 9A Taxes Management Act 1970.

15 18. On 17 September 2007, HMRC expressed their view that the payment in excess of £30,000 fell to be treated as "employment income" for the relevant tax year, and to be taxed as such.

19. On 27 December 2007, HMRC issued a closure notice bringing out tax due of £14,883.42.

20. On 23 January 2008, Hancocks lodged an appeal against this decision.

#### 20 **Arguments advanced at the original hearing**

21. The Tribunal, at the request of both parties, took into account the arguments recorded as having been advanced at the original Hearing. Those are as follows:-

25 22. In his submission to the Tribunal, Mr Hancock pointed out that Mr Bimson had incurred costs of £25,121 in converting his premises and a further £38,000 in reconverting the same, together with a licence fee of £21,879, a total of £85,000 whereas he only received £77,905 in compensation, representing a "loss" of £7,095 (as to which see paragraph 32(e) below).

30 23. On the basis of the Agreement with Post Office Ltd and other published information, Mr Bimson was self employed; and Mr Hancock illustrated this from the cases of *Wolstenholme v Post Office Ltd* and *Chohan v Logan* in that Mr Bimson was not obliged personally to perform the required work, and was entitled to employ a substitute. He was a provider of services, and was not an employee of the Post Office.

24. Mr Hancock also referred to s 20(2) of the Postal Services Act 2000

35 (2) No officer, servant, employee, agent or sub-contractor of a universal service provider shall be subject, except at the suit or instance of the provider, to any civil liability .....

to demonstrate that an “agent” can work for the Post Office.

25. It was further pointed out that throughout the period that Mr Bimson was a sub postmaster, his remuneration from the Post Office and the profits from his business were all assessed as if it was Schedule D income; and indeed, in his personal tax return, he recorded that he had no taxable income. Mr Hancock acknowledged that Mr Bimson had been charged to National Insurance as an employee, but he submitted that different criteria applied for National Insurance.

26. Mr Hancock added that in the final accounts for the Company, the amount of the compensation was set against the capital costs.

27. Mr Kelly explained that this was an appeal by Mr Bimson against a decision of HMRC to amend Mr Bimson’s self-assessment tax return. The HMRC decision was that the payment made to Mr Bimson by the Post Office was a payment to which chapter 3 of Part 6 of ITEPA applied, because it fell within the definition contained in section 401 of that Act. The payment was made as a result of Mr Bimson’s agreement to take advantage of the Post Office Network Reinvention Programme Closure Scheme. The effect of HMRC’s decision was that the amount of the payment in excess of £30,000 fell to be treated as “employment income” for the relevant tax year, and to be taxed as such.

28. Mr Kelly explained that for ITEPA to apply to the payment:-

- (a) There must be an “office” or “employment”;
- (a) the income must fall within s 62 as “earnings”; and
- (b) the income comes from that office or employment.

Mr Kelly acknowledged that Mr Bimson was not an employee of the Post Office. However, having regard to the absolute discretion which the Post Office had in appointing a sub postmaster, Mr Kelly concluded that the position of sub postmaster was an “office” and that Mr Bimson was therefore an officeholder for the purposes of ITEPA. Further, the remuneration received by Mr Bimson from the Post Office came within the wide meaning of “earnings” as set out in s 5 of ITEPA.

29. Mr Bimson’s remuneration from the Post Office was paid to the Company and assessed to Corporation Tax, but Mr Kelly emphasised that this was a concession and that where a sub postmaster did not have a private trade, the income from the Post Office was assessed under ITEPA.

30. In the opinion of Mr Kelly, the payment by the Post Office was compensation for loss of office, namely the ending of the Post Office contract, and was therefore a payment to which s 401 of ITEPA applied.

31. In a letter from Hancocks to HMRC dated 29 August 2007, it was stated that  
.....our client, after further investigation, was able to compute monies owing to himself from the GPO on the alternative business method which takes into

account the extensive costs of converting the premises back from the original restructuring to conform to GPO Post Office requirements.

In response to this, Mr Kelly founded on the observation of Lord Buckmaster in *Glenboig Union Fireclay Co Ltd v CIR* at 464 to the effect that

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.....there is no relation between the measure that is used for the purpose of calculating a particular result and the quality of the figure that is arrived at by means of the application of that test.

Mr Kelly concluded that the whole of the payment by the Post Office fell to be assessed under s 401 (subject only to the deduction of £30,000 under the provisions of s 403).

### **Summary of the Arguments advanced at the hearing on 15 March 2012**

32. Mr Bimson argued that:-

- 15 (a) Throughout his period with the Post Office all income had been paid into his company and he and his wife divided it, so he did not understand why the final payment should not have been treated in the same way.
- 20 (b) He did not consider that it was fair that the final payment should have been treated as his income and that he should have been taxed on the full amount of it (after deduction of the tax free £30,000) when it should have gone into the company and, as appropriate, been divided with his wife. To be subjected to Schedule E tax on the final payment was wholly unfair since all previous payments had been assessed to corporation tax on a Schedule D basis.
- 25 (c) He believed that he had never been employed by the Post Office. He had always been "self employed" in the sense that Schedule D (in the context of Corporation Tax) had been applied to the income from the Post Office. The contract under which he had operated for the Post Office was a contract for services; he was effectively an agent or subcontractor but not
- 30 an employee. In his view, he had an agency agreement with the Post Office.
- 35 (d) He stated that the October letter to him showed that the Post Office had an agreement with HMRC that the final payment (being a payment under the Closure Scheme) was Schedule D income. Accordingly, to subject him to assessment under Schedule E was in breach of that agreement and that agreement should have been brought to the attention of the original Tribunal and was very important for this Hearing.
- 40 (e) Lastly, he argued that because the Business Value method of calculation (see paragraph 12 above), in his view, was not related to salary and had elements relating to the valuation of the property, that meant that it had a "capital flavour". He lodged a copy Valuation Report dated July 2004 which showed that the value of the property with the Post Office

accommodation was £200,000, whereas without it, it was £160,000. The Post Office had paid for nothing in the sense that he had made an investment totalling £131,000 and had not been recompensed effectively for that. Overall, therefore he had sustained a loss. He believed that the final payment was reimbursement of some of the losses sustained on his investment in the Post Office and therefore was not chargeable to income tax.

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33. Mr Kelly for HMRC argued that:-

- 10 (a) He agreed that Mr Bimson had never been employed by the Post Office but, by virtue of having purchased the licence, being approved by the Post Office, and occupying the post of subpostmaster, Mr Bimson had an "office" within the meaning of the legislation. Accordingly the final payment was a sum paid as compensation for loss of office and was therefore taxable by virtue of ITEPA s 401 (apart from the first £30,000 -
- 15 [s403]).
- (b) The taxation treatment of the Post Office income prior to the closure of the business had been a matter of concession and that could not alter the status, or nature, of any of the payments made to Mr Bimson.
- 20 (c) Mr Kelly referred to further documentation, which related to the October letter, and which, he argued, established clearly that the "agreement" between HMRC and the Post Office related to process (as between HMRC and the Post Office) and not to the underlying taxability of any payments: accordingly the October letter had no impact on the arguments in relation to the taxation of the payment.
- 25 (d) He was clear that the final payment was not a capital receipt and that the Business Value method of calculation was simply a mechanism. It could not change the underlying nature of the payment and therefore its taxation treatment.

### Case Law

30 34. The Tribunal was directly, or indirectly, referred to the following case law by the parties:-

*Barnett v Brabyn* 69 T.C. 133

*Blackburn v Close Bros Ltd* 39 TC 164

*Carmichael v National Power plc* [1999] 4 All ER 897

35 *Chohan v Logan*: Employment Appeal Tribunal, 29 August 2002 (EAT/284/02) unreported

*CIR v Brander & Cruickshank* 46 TC 574

*Cude v HMRC* [2010] UKFTT 424 (TC)

*Dhendsa v Richardson* [1997] STC (SCD) 265

- Express & Echo Publications v Tanton* [1999] IRC 693  
*Edwards v Clinch* 56 TC 367  
*Glenboig Union Fireclay Co Ltd v CIR* 12 TC 427  
*Great Western Railway v Bater* 8 TC 231  
5 *Hall v Lorimer* [1994] 1 All ER 250  
*Kelsall Parsons & Co v CIR* 21 TC 608  
*Lane v Shire Roofing* [1995] IRLR 493  
*McManus v Griffiths* 70 TC 218  
*O'Kelly v Trusthouse Forte plc* [1984] QB 90  
10 *Wolstenholme v Post Office Ltd* [2003] ICR 546

### **The Legislation**

35. Section 5 ITEPA provides:-
- "Application to offices and office-holders
- 15 (2) The provisions of the employment income Parts that are expressed to apply to employments apply equally to offices, unless otherwise indicated.
- (3) 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;
- 20 (c) "employer" means the person under whom the office-holder holds office.
- (4) In the employment income Parts "office" includes in particular any position which has an existence independent of the person who holds it and may be filled by successive holders."
- 25 36. Section 62 of ITEPA provides:-
- "earnings" 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
- 30 (c) anything else that constitutes an emolument of the employment."
37. Chapter 3 of ITEPA is headed PAYMENTS AND BENEFITS ON TERMINATION OF EMPLOYMENT ETC, and within that Chapter, s 401 provides:-



"401 Application of this Chapter

(5) 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 -

- 5           (a) the termination of a person's employment;
- (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 [or civil partner], blood relative, dependant or personal representatives."

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**Reasons for Decision and Further Findings in Fact**

38. As indicated above, the crux of Mr Bimson's case was that s 401 could not apply because he was not at any time an employee of the Post Office and the payment was not therefore "in connection with the termination of...employment." It was a matter of agreement that Mr Bimson was never an employee of the Post Office. What then was his status, and, in particular, was he the holder of an "office" which would bring him into the description of "employment" as that expression is used in s 401?

39. The Post Office Contract in Section 1 paragraph 1 states that:- "The contract is a contract for services and consequently the Sub postmaster is an agent and not an employee of Post Office Ltd." That accords with Mr Bimson's understanding that he was an agent and the Tribunal finds that that was the case but it does not answer the question whether he was an office holder within the meaning of the relevant tax law.

40. Mr Bimson produced with his application to appeal to the Upper Tribunal the October letter and its enclosure which is a document entitled "Subpostmasters - Tax, National Insurance & VAT". Both parties founded on that document. Mr Bimson argued that it supported his position that Schedule D should apply to him. The position is put very well in that document at paragraphs 2.1 and 2.2 which read as follows:-

"2.1 Subpostmasters are not employees, as defined under employment law, but are instead independent contractors operating under a contract for services with Post Office Ltd. However, HMRC regard subpostmasters as "employed earners by virtue of being office holders with emoluments chargeable to tax under Schedule E". As "employed earners" subpostmasters are treated in very much the same way as employees when it comes to tax and NICs.

2.2 With respect to tax, this means that every subpostmaster is liable to the direct deduction of Income tax from his or her remuneration via the PAYE system. However, many subpostmasters also run a private business on their premises and most of these are able to secure HMRC agreement to having their post office remuneration and their income from their private business amalgamated and assessed for tax annually under Schedule D. It is for the

subpostmaster to seek this concession from his or her HMRC office. Post Office Ltd has a legal obligation to deduct tax at source unless notified in writing by HMRC that an NT coding (no tax deducted) may be applied."

5 41. That document, in very slightly different format, had also been issued to Mr Bimson as Appendix A to the letter from the Post Office to Mr Bimson dated 28 October 1999 which sets out very fully the duties of a subpostmaster. It therefore underpinned and made clear the relationship between Mr Bimson and the Post Office. The contract which he signed on 9 February 2000 sets out in detail and at length the many responsibilities of a subpostmaster and the relationship with the Post Office.

10 42. Mr Bimson confirmed, and the Tribunal agrees, that the Licence referred to in paragraph 9 above was in his name only and was personal to him. He had purchased it from the Post Office since the business was closed at that juncture and was effectively "for sale". The transaction, and therefore his appointment, only proceeded after the Post Office had been satisfied that he was a fit and proper person to run a  
15 Post Office.

43. He stated that in addition to the costs set out at paragraph 21 above, £6,080 had been deducted from his "salary" in the first year. The Tribunal noted from the letter of 28 October 1999 that that deduction was "in recognition of the opportunity to operate a Post Office on behalf of Post Office Counters Ltd." and that in his copy of  
20 the conditions for appointment dated 9 February 2002 he accepted that such a deduction would be made because it was "in order to reflect the uncertainty and risk to Post Office Counters Ltd in making an appointment to fill this vacancy". In summary his investment in the Post Office had been the licence fee of £21,879, the conversion cost of £25,121, the reconversion costs of £38,000, the deduction from  
25 salary of £6,080 and the difference in the valuation of £40,000 (paragraph 32(2) above), a total of £131,080. The Tribunal accepted that he had paid the first three and, in the case of the latter two he had effectively invested those amounts: for the avoidance of doubt the Tribunal did not make any findings as to the revenue or capital  
30 natures of these figures, since it was not material to the decision for the reasons that follow.

44. Mr Bimson was clear that, having had his application approved, and made the requisite payments, his accountant had applied to HMRC to have the benefit of the concession whereby the Post Office salary was treated as income of his company which traded from the same premises. The Tribunal notes that that was granted on the  
35 basis that he handed over the gross income to the company (in accordance with BIM66301) and that Class 1 National Insurance (NIC) remained payable on the salary. That system was successfully operated until the closure of the business. All payments including the final payment had been paid into the company.

45. It is accurate to say that HMRC regard subpostmasters as "office holders".  
40 Looking to the totality of the evidence, this Tribunal has no hesitation in finding that the term "office" is widely defined in the legislation (s 5 and s 564 ITEPA) and specifically that the post of subpostmaster has an existence, independent of the person who holds it and that it may be filled by successive holders; it is therefore an

office. The Tribunal finds that Mr Bimson was required to deliver services in a manner which was wholly consistent with being the holder of an office and that therefore he was the holder of an office.

5 46. What then is the correct taxation treatment of the final payment? The crucial issue is to define the nature of the payment. As indicated above, Mr Bimson argued that, not least because of the method of computation it had a capital flavour. In the final accounts it had been set against the capital costs. Undeniably, Mr Bimson had incurred capital costs but that is not the starting point which is the letter of 10 20 August 2004 (see paragraph 25 above) and that states clearly at paragraph 2.1 that "This sum represents compensation for loss of office". There was no breakdown of this figure, nor was there a suggestion that any part related to the expenditure which had been incurred by Mr Bimson. On the contrary it states clearly:-

15 "2.8 The Inland Revenue has confirmed that that part of the total payment which relates to compensation for loss of office will be chargeable to tax under Section 401 of the Income Tax (Earnings and Pensions) Act 2003 and will attract the exemption, up to a maximum £30,000 contained in Sections 403 and 404 of the same Act. If you have received any previous payments to which section 403 applies as an office holder or employee of Post Office Ltd and associates, the threshold will be reduced."

20 47. Clearly that Offer makes it explicit that the compensation offer was extended to, and accepted by, him in his capacity as an office holder of Post Office Ltd and that it was compensation for loss of office. The Department of Trade and Industry Guidance, approved by the Secretary of State, entitled "Basis of payments of compensation to sub-postmasters" and which includes the full detail of the Business 25 Value Method of calculation at Appendix 1 states explicitly at paragraph 1.4:-

"1.4 The compensation payments described in this note and its Appendix 1 represent, in their entirety, compensation for loss of office."

30 48. Mr Bimson said that he had reluctantly opted for the Business Value method of calculation because it took into account his capital expenditure and it resulted in a higher final payment. Undoubtedly, capital expenditure is one point of reference in this method of calculation but paragraph 7 states explicitly that:-

"7. In no event shall the inclusion of a disposal valuation....cause the amount of compensation payable to exceed the equivalent of 28 months' remuneration...."

35 The Tribunal therefore finds that the method of calculation is clearly also very closely related to the quantum of the income payments. In any event, the Tribunal noted and accepted Mr Kelly's argument, at paragraph 30 above, that the observation of Lord Buckmaster in *Glenboig Union Fireclay Co Ltd v CIR* at 464 to the effect that

40 .....there is no relation between the measure that is used for the purpose of calculating a particular result and the quality of the figure that is arrived at by means of the application of that test.

was in point. The method of calculation of the payment is irrelevant to its taxation treatment. The crucial test is whether the final payment, however calculated, was "in consideration of, or otherwise in connection with" termination of the office held by Mr Bimson. The Tribunal is clear that the payment was made in terms of the Closure Scheme and specifically in relation to the termination of Mr Bimson's tenure as Sub postmaster at St Mary's Post Office when it was closed. Accordingly, it was made in connection with the termination of the office.

49. The remaining issue for the Tribunal was whether or not the final payment fell to be taxed under s 401 (and partially relieved under s 403). The October letter dealt specifically with the final payment and stated in the second, third and paragraphs:-

"As discussed, this payment was made outside of the normal payroll so would not have been reported to the Inland Revenue at financial year end. Instead we had an agreement with the Inland Revenue to advise them of these payments by e-mail and we were instructed to use the following wording when sending such e-mails:

"Please find attached a spreadsheet detailing the payments made to agents in (month) 2005 in respect of our Network Reinvention programme. As agreed with Mike Hallas .....these payments have all been processed outside of payroll and are appropriate to individuals on Schedule D.

I can confirm that the tax code we applied for this payment was NT. Paragraph 2.2 on the enclosed document entitled "Subpostmasters - Tax, National Insurance & Vat" provides information about Schedule D"

50. In regard to that letter and enclosure the Tribunal finds that the "agreement" referred to in the second sentence of the second paragraph is an agreement about the method of reporting the payments and not about the underlying taxation treatment of the payments. That view is supported by the documentation produced by HMRC and, in particular, the e-mail from Mike Hallas, Head of Employment Taxes at Royal Mail, dated 28 February 2012 stating that he was not aware of any agreement with HMRC to the effect that the Compensation payments were not compensation for loss of office and that the October letter was referring to the operation of the NT code.

51. The import of referring to the operation of the NT code is to be found in the letter of 5 November 2002 where Royal Mail indicate that if they were required to deduct tax from compensation payments then they would have difficulties and there would be an administrative burden. Accordingly, they proposed a compromise for those sub postmasters who had been granted the concessionary treatment alluded to in paragraph 39 above in the quotation at 2.2. That compromise was to make the payments gross but provide the listing to HMRC. When a payment is made gross the NT coding is utilised. That was what was done in this case. The letter of 5 November makes it explicit that it was always understood by Royal Mail that the payments were compensation for loss of office and that tax would fall to be paid thereon; they simply did not have the system available to them to either deduct the tax or make returns in the usual way. HMRC accommodated their administrative issues by allowing the payments to be paid on an NT basis and for the returns to be made by e-mail. Had

they not done so and insisted on tax being deducted then the tax coding would have had to have been changed and then the final monthly payment would also have had tax deducted and could not have been charged to tax through the sub postmaster's retail business (as is also made explicit in said letter).

5 52. The remaining point for the Tribunal was whether HMRC could assess  
Mr Bimson to tax on his salary through the company until the final payment but then  
assess him to income tax on the final payment, personally. The arguments are set out  
above. Mr Bimson relied on *Barnett v Brabyn* to argue that HMRC cannot easily  
10 case is of little precedent value: the Tribunal finds that it has no application in this  
instance.

15 53. In fact, the situation is quite straightforward in practice. It was by concession  
that the salary payments were amalgamated with the business receipts. There was no  
concession for termination payments. They should have been paid under deduction of  
tax. As a result of Royal Mail's systems it was not possible to do so for those who  
had had the benefit of the concession, like Mr Bimson, without then deducting tax  
from the final month's salary which would have been disruptive and difficult to  
20 of tax but the latter would have disadvantaged Mr Bimson. In fact, as it happens, it  
was more advantageous for Mr Bimson to be paid gross, as indeed he was so paid.

25 54. In summary, therefore, the October letter changes nothing. The position is that  
when Mr Bimson held the office of subpostmaster at St Mary's, he was paid what he  
described as a monthly salary. By concession from HMRC, on his application, that  
income was paid into and amalgamated with the income of the company and taxed  
accordingly throughout his tenure in office. When the sub Post Office had to be  
closed, he was paid the final payment personally, since he alone was the Licence  
Holder, and that payment was because his occupation as subpostmaster had  
terminated.

30 55. Accordingly, the Tribunal finds that the final payment has been brought into  
charge to Income Tax correctly and that therefore, for all of the reasons set out above,  
the Appeal fails.

35 56. 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: 26 March 2012**

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