TC02051

Appeal number: TC/2011/04180

INCOME TAX – Section 26 Income Tax (Earnings and Pensions) Act 2003 – taxpayer had joint account outside the UK – Whether use by other joint account holder of debit card to make cash withdrawals or purchases in the UK were remittances by taxpayer to the UK – No – appeal allowed.

FIRST-TIER TRIBUNAL
TAX CHAMBER

KLAUS OTTO PFLUM **Appellant**

- and -

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

TRIBUNAL: JUDGE TIMOTHY HERRINGTON
ELIZABETH BRIDGE

Sitting in public at 45 Bedford Square, London WC1 on 23 March 2012

Mr Robert Churchill, Day Smith & Hunter, Chartered Accountants for the Appellant

Mrs Irene Taggart, HM Inspector of Taxes for the Respondents

DECISION

1. By Notice of Appeal dated 2 June 2011, the Appellant, Mr Klaus Otto Pflum ("Mr Pflum") appealed against the amendments made by the Respondents ("HMRC") to his self assessment returns for the years ended 5 April 2007 and 5 April 2008 as set out in closure notices dated 29 March 2011. Specifically, Mr Pflum appeals against the additional tax of £64,507.66 assessed in respect of the year ended 5 April 2007 and the additional tax of £4,988.40 assessed in respect of the year ended 5 April 2008.

Background Facts

2. The matters described in paragraphs 3 to 26 below are common ground between the parties.

3. Mr Pflum arrived in the UK on 1 April 2006 with the intention of remaining for 2-3 years. He was employed in London by Nomura International PLC as head of the Automotive, Industrials and Materials Division.

4. Mr Pflum's UK employment ceased on 31 October 2008 and he subsequently left the UK to reside in Switzerland.

5. Mr Pflum's UK Tax Returns for 2006-2007 and 2007-2008 were both submitted on the basis that he was resident but not ordinarily resident and not domiciled within the UK. The earnings relating to his UK workdays were therefore chargeable under Section 25 of the Income Tax (Earning and Pensions Act 2003 ("ITEPA") and those relating to his overseas workdays were chargeable under Section 26 ITEPA. Sections

25 and 26 of ITEPA as in force at the relevant time are set out in the Appendix to this decision.

6. Mr Pflum's 2006-2007 Return reported total earnings of £304.761 of which £143.491 related to his UK duties and were therefore taxable in full under Section 25 of ITEPA. £161,270 related to his overseas duties chargeable under Section 26 of ITEPA. The note with the Return stated the entry of £161,720 was in respect of income relating to non-UK workdays which was paid offshore and not remitted to the UK. If that was correct, none of the £161,270 earnings relating to overseas duties was taxable as Section 26 of ITEPA only taxes income earned in respect of duties performed outside the UK insofar as those earnings are remitted to the UK. The Self Assessment showed £65,257.92 overpaid.

7. For 2006-2007 it has been agreed that the figure of earnings relating to UK and non-UK duties as reported on the Return should be amended to £147,936 relating to UK workdays and £1576,825 relating to non-UK workdays.

8. Mr Pflum's 2007-2008 Tax Return reported total earnings of £674,127 plus benefits £800 of which £184,306 related to his UK duties and were therefore taxable in full under Section 25 of ITEPA 2003. None of the £490,621 earnings were reported as taxable on the basis they related to non-UK workdays, were paid offshore and were not remitted to the UK. The Self Assessment showed £196,528.80 overpaid.

9. Day, Smith and Hunter, Mr Pflum's tax agents, submitted an amendment to the 2007-2008 Tax Return on 11 June 2009 to include taxable remittances, that is

earnings taxable under Section 26 of ITEPA of £121,960. This reduced the tax overpaid from £196,528.80 to £187,744.80.

10. For 2007-2008 the figure of earnings relating to UK and non-UK duties has been agreed as £184.307 relating to UK workdays and £490,020 relating to non-UK workdays.

11. HMRC opened enquiries into the 2006-2007 Tax Return and into the amended 2007-2008 Tax Return on 3 November 2008 and 2 November 2009 respectively.

12. All of Mr Pflum's salary was paid directly into a Barclays Bank account in Guernsey, (the "Guernsey Account"). This account was held solely in his name.

13. Some of the monies in the Guernsey account were used in the UK and some were transferred to a Barclays Isle of Man (the "Isle of Man Account"). The Isle of Man account was held in the joint names of Mr Pflum and Ms Olga Luzhanskaya.

14. The monies used directly from the Guernsey Account to meet UK expenditure and UK credit card bills are remittances to the UK of Mr Pflum and are taxable pursuant to Section 26 of ITEPA.

15. In 2006-2007 £8,658 was used from the Isle of Man Account to pay standing orders and direct debits in respect of UK rental and utility bills for which Mr Pflum was liable. It is agreed these are remittances to the UK of Mr Pflum and taxable pursuant to Section 26 of ITEPA.

16. In 2007-2008 £1,624 was used from the Isle of Man Account to pay standing orders and direct debits in respect of UK rental and utility bills for which Mr Pflum

was liable. It is agreed these are remittances to the UK of Mr Pflum and are taxable pursuant to Section 26 of ITEPA.

17. At the closure of the enquiry into the 2006-2007 Return HMRC issued a closure notice under the provisions of Section 28 of the Taxes Management Act 1970 along with an amendment to the Self Assessment. The amendment taxed the whole of the overseas earnings on the basis they were remitted to the UK. The original Self Assessment showed £65,257.92 overpaid. HMRC's amendment showed £750.26 overpaid, the difference being an increase in tax due of £64,507.66.

18. An additional liability of £37,960 for taxable remittances has been agreed for 2006-2007. This includes a sum of £8,658 paid out of the Isle of Man Account which Mr Pflum accepts are to be treated as remitted to the UK.

19. A further £39,764 came into the UK from the Isle of Man Account in 2006-2007 by way of cash withdrawals from UK cash machines and purchases of goods in the UK by way of a debit card. Whether Mr Pflum is liable to income tax or those sums under Section 26 of ITEPA is at issue in this appeal. This sum is referred to in this decision as ("the 2006/2007 disputed remittances").

20. At the closure of the enquiry into the 2007-2008 Return, HMRC issued a closure notice under the provisions of Section 28 of the Taxes Management Act 1970 along with an amendment to the Self Assessment. The amendment taxed £34,431 of overseas earnings on the basis they were remitted to the UK. The original Self Assessment supplied by Day, Smith and Hunter showed £196,528.80 overpaid.

HMRC's amendment showed £182,758.40 overpaid, the difference being an increase in tax due of £13,772.40.

21. For 2007-2008 no additional liability for taxable remittances has been agreed. It has, however, been accepted by Mr Pflum that the sum of £1,624 paid out of the Isle of Man Account is to be treated as remitted to the UK.

22. A further £21,201 came into the UK from the Isle of Man Account in 2007-2008 by way of cash withdrawals from UK cash machines and purchases of goods in the UK by way of a debit card. Whether Mr Pflum is liable to income tax or those sums under Section 26 of ITEPA is at issue in this appeal. This sum is referred to in this decision as "the 2007-2008 disputed remittances".

23. On 13 April 2011 Mr Pflum's agents asked HMRC for an independent review of the decision to amend the 2006-2007 Self Assessment Tax Return, which had included the 2006-2007 disputed remittances as income taxable under Section 26 of ITEPA and on 20 April 2011 Mr Pflum's agents asked HMRC for an independent review of the decision to amend the 2007-2008 Self Assessment Tax Return, which had included the 2007-2008 disputed remittances as income taxable under Section 26 of ITEPA.

24. On 6 May 2011 HMRC sent a letter to Mr Pflum setting out the reasoning behind the decisions leading to the amendment to the 2006-2007 and 2007-2008 Self Assessments issued by HMRC on 28 March 2011 and on 10 May 2011 Mr Pflum was advised that the decisions had been upheld following the independent reviews.

25. On 2 June 2011 Mr Pflum's agents gave notice of appeal against the decisions to amend the Self-Assessment Tax Returns for 2006-2007 and 2007-2008. The grounds of appeal were that the overseas earnings of Mr Pflum transferred from the Guernsey Account to the Isle of Man Account were beneficially owned by Ms Luzhanskaya, with the exception of some specific payments made by direct debit or standing order, being the amounts of £8,658 and £1,624 referred to in paragraphs 18 and 21 above. Consequently, when Ms Luzhanskaya withdrew funds from the account in the UK the amounts concerned did not represent taxable remittances of Mr Pflum.

26. Mr Pflum and Ms Luzhanskaya were married in 2008 and now live in Switzerland. For convenience Mr Luzhanskaya is henceforth referred to in this decision as Mrs Pflum.

Issue

27. The issue to be determined is whether, as contended by HMRC, all the sums standing to the credit of the Isle of Man Account from time to time are to be regarded as beneficially owned solely by Mr Pflum as they are represented solely by deposits of his earnings, or, as contended by Mr Pflum, the sums are to be regarded as beneficially owned solely by Mrs Pflum with the exception of those monies earmarked by Mr Pflum to meet certain liabilities of his in the United Kingdom.

28. If HMRC are right then all monies withdrawn in cash from the Isle of Man Account through the use of a debit card, used to pay for purchases in the United Kingdom through the case of such a card or otherwise transferred to the United

Kingdom should be regarded as having been remitted by Mr Pflum to the United Kingdom and therefore subject to income tax under section 26 of ITEPA. Section 33 of ITEPA provided at the relevant time that general earnings are treated as remitted to the UK "if they are paid, used or enjoyed in the UK or transmitted or brought to the UK in any manner or form". The effect of Section 50(6) of the Taxes Management Act 1970 is that the burden of proof is on Mr Pflum to show that the assessments appealed against are excessive. The relevant part of these provisions are set out in full in the Appendix to this Decision.

29. If Mr Pflum is right then the monies withdrawn from the Isle of an Account in any of the ways described in paragraph 28 above should be regarded as belonging absolutely to Mrs Pflum and therefore not treated as income of his remitted to the United Kingdom for the purposes of Section 26 of ITEPA.

Evidence

30. We were provided with bank statements both for the Guernsey Account and the Isle of Man Account, covering the periods between 1 April 2006 and 1 April 2008 in the case of the Guernsey Account and 18 March 2006 to 18 April 2008 in the case of the Isle of Man Account. We were also given various schedules for each of these accounts, prepared from information extracted the bank statements, namely a schedule of the direct debits and standing orders, paid out of the respective accounts, a schedule of the withdrawals of cash effected with a debit card from the respective accounts and a schedule of withdrawals from the respective accounts made by other means.

31. We were also provided with a copy of Mr Pflum's credit card statements for his American Express Centurion Card for the period from 22 March 2007 to 15 April 2008 and a schedule of the UK and non-UK purchases made on that card during that period.

32. We were also provided with a copy of a document, described as a Confirmatory Declaration of Trust, executed by Mr and Mrs Pflum on 12 April 2010 in which they confirmed and declared that from the date the Isle of Man Account was opened until its closure, the account was held by them beneficially for Mrs Pflum alone with the exception of various direct debits listed in the schedule to the document.

33. Both Mr and Mrs Pflum gave oral evidence concerning the operation of the Isle of Man Account on which they were cross-examined by Mrs Teggart.

34. Mr Pflum explained that Mrs Pflum came to the UK in 2003 as a student on the basis that she was only permitted to stay provided that she undertook no work and without recourse to public funds. He said that he agreed to support her by paying for the outgoings on the property in which they both resided when in the UK and to give her adequate money to enable her to provide for herself independently.

35. Mr Pflum explained that his main home was in Germany and Switzerland and much of his employment was undertaken outside the UK as his duties required extensive travel to various parts of the world. For this reason as well as his desire to provide for Mrs Pflum he felt that it was important that she had access to funds under her control.

36. Mr Pflum said that he asked Barclays International whether an account including a debit card could be opened in her sole name but as a student with no permanent address or income within the UK they found this impossible to do. It was established that the only way in which funds could be deposited in an account for her use was to open an account in their joint names and this they did with Barclays International in the Isle of Man.

37. Mr Pflum explained that he deposited money into the account from time to time but when the account was opened he immediately disposed of the debit card that was issued to him so that he had no immediate access to the sums held within the account. He said that his intention from the outset was treat the account as belonging to Mrs Pflum.

38. Mr Pflum stated that all cash withdrawals and card purchases were made by Mrs Pflum for her own use. He said that she did not ask his permission because it was always understood that he had given her all the monies within the Isle of Man Account for her own use absolutely. He said that he used the Guernsey Account for his personal outgoings.

39. He explained that he and his wife had entered the Confirmatory Declaration of Trust in 2010 on the advice of his accountant, merely to record what had been the true intention as regards the ownership of the monies in the Isle of Man Account all along.

40. Mr Pflum explained that there was never any intention that any of the monies in the Isle of Man Account would revert to him, save in relation to a limited number of

direct debits and standing orders, and in respect of a small number of payments made to him by his wife as described in paragraph 44 below.

41. Mr Pflum explained that the basis of his arrangement with his wife was that he gave her an allowance to spend as she saw fit and this was deposited in the account on a regular basis. This is consistent with the evidence of the transfers into the Isle of Man Account from the Guernsey Account which show, after initial payments of £7,000 in April and May 2006, payments of £3,500 later reducing to £3,300 for the rest of that tax year and crediting on or about the 16th of each month, and payments of £3,000 per month during the first part of the 2007-2008 tax year, reducing to £2,500 from October 2007 onwards.

42. There were also a number of other transfers from the Guernsey Account to the Isle of Man Account on an irregular basis. For example, a sum of £20,000 was transferred on 2 June 2006. Mr Pflum explained (and this was confirmed by Mrs Pflum when she gave evidence) that this was to help Mrs Pflum fund the purchase of a property in the Ukraine. Mr Pflum explained that some of the other irregular payments were additional sums he had agreed to pay to his wife where the regular sums had been insufficient for her needs and also to fund the regular direct debits referred to in the Confirmatory Declaration of Trust referred to in paragraph 32 above.

43. With regard to the direct debits referred to in paragraph 43 above, Mr Pflum explained that these related to the outgoings of the property in which he and his wife resided when they started living together. Mr Pflum stated that it had been arranged to make those payments out of the Isle of Man Account, rather than the Guernsey Account, because it showed regular credits and outgoings from the account which

facilitated the issue of a debit card on the account. Over time, the number of these direct debits reduced and they were paid out of the Guernsey Account, and the amount he transferred to the Isle of Man Account reduced accordingly. The statements for the Isle of Man Accounts do show a number of credits corresponding closely to the amount of the relevant outgoings. Mr Pflum had always accepted that the payments made in respect of these outgoings were his responsibility and the relevant payments were remittances to the UK in respect of which UK income tax was payable, and had been treated as such on his self-assessment return.

44. There were a small number of transfers out of the Isle of Man Account to the Guernsey Account. Mr Pflum explained these related to purchases made by his wife which had caused the allowance he had given her to be exceeded and thus it had been agreed that he should be reimbursed for them.

45. In cross-examination Mrs Teggart suggested that perhaps Mr Pflum derived more benefit from the Isle of Man Account than that described above. In particular, she questioned whether Mr Pflum derived any benefit from some of the cash withdrawals made. Mr Pflum confirmed that he had never used the debit card on the account that had been issued to him and he had destroyed it. Neither did he ever use his wife's debit card. Whilst the Guernsey Account showed a large number of cash withdrawals (commonly £300 a time) Mrs Teggart pointed out that there were periods where Mr Pflum made no cash withdrawals from that account, for example, Mrs Teggart noted that no cash sums had been withdrawn from the Guernsey Account in April 2006, yet £700 was withdrawn from the Isle of Man Account during that month, so she questioned whether the latter withdrawals might have been for his benefit.

Similarly, she noted that a large number of purchases made by debit card or the Isle of Man Account were for everyday items such as groceries, whereas there were comparatively few such purchases on the Guernsey Account, again suggesting that some of the purchases made on the Isle of Man Account were for Mr Pflum's benefit.

46. In response Mr Pflum stated that he had other accounts on which he could draw out cash. In any event, April 2006 was the date he became resident in the UK and he may have had cash with him when he arrived which meant he did not need to draw on the Guernsey Account. With regard to groceries and other day to day purchases, he said that he tended to use his American Express Centurion Card for these; the statements for that account do show a considerable number of such purchases. He said that he might have had some benefit from some of the groceries purchased with the debit card or the Isle of Man Account, but those purchases were primarily for Mrs Pflum's own benefit.

47. The overall thrust of Mr Pflum's evidence was that, save for the specific direct debits referred to in paragraph 43 above, the Isle of Man Account was regarded as his wife's account, funded through an agreed allowance from the Guernsey Account, and his wife was free to spend the money in it as she chose without reference to him.

48. Mrs Pflum gave evidence to the same effect and she confirmed that her understanding of the arrangements for the Isle of Man Account were the same as that of her husband. She said that she had never withdrawn cash or made purchases of any material amount for the benefit of Mr Pflum.

49. We found both Mr and Mrs Pflum to be credible and persuasive witnesses who gave clear and consistent evidence. The explanation given as to the circumstances in which the Isle of Man Account came to be opened as a joint account rather than solely in her own name we found to be wholly plausible; we can see why it would be difficult for a young student from overseas to be given an account immediately that allowed the use of an unrestricted debit card, as opposed to the account that Mrs Pflum had with a restricted use debit card before she met Mr Pflum. The way in which the bank account operated, as shown by the various schedules provided, is entirely consistent with the explanation given by Mr and Mrs Pflum. We therefore find that the Isle of Man Account was to be operated solely at the discretion of Mrs Pflum, subject to the payment of the various direct debits identified for Mr Pflum's benefit, without further reference to Mr Pflum. Any benefit that Mr Pflum may have had from purchases made with the debit card was purely incidental and does not affect this analysis.

Submissions

50. Mr Churchill, for Mr Pflum, submitted that subject to the monies earmarked for paying the direct debits for Mr Pflum's benefit, the monies held in the Isle of Man Account were owned beneficially solely by Mrs Pflum. When opened, the account was held by Mr and Mrs Pflum as joint tenants in law and equity, but the joint tenancy had been severed through a course of conduct that indicated the monies were to be solely at Mrs Pflum's disposal, such that the legal position was that the account was owned as tenants in common with Mrs Pflum's share being 100% less the monies earmarked for the direct debits for Mr Pflum's benefit.

51. Mr Churchill referred to Section 36(2) of the Law of Property Act 1925 the proviso to which states:

> "where a legal estate (not being settled land) is vested in joint tenants beneficially, and any tenant desires to sever the joint tenancy in equity, he shall give to the other joint tenants a notice in writing of such desire or do such other acts or things as would, in the case of personal estate, have been effectual to sever the tenancy in equity, and thereupon the land shall be held in trust on terms which would have been requisite for giving effect to the beneficial interests if there had been an actual severance".

52. It is accepted that the principles of Section 36(2) apply to joint tenancies of personal property as well as real property. Section 36(2) makes it clear that a notice in writing is not essential to sever a joint tenancy, and that such acts or things that would be sufficient to amount to acts of severance in relation to personal estate are sufficient. In the case of *Burgess v Rawnsley* [1975] EWCA Civ 2 that Mr Churchill cited to us, it was held that in the absence of an agreement in writing, a course of dealing that clearly evinced an intention by both parties that the property should be held in common not jointly was sufficient: see Lord Denning MR at Page 5 of the judgment.

53. In the present case, Mr Churchill submitted that the course of dealing clearly led to the conclusion as to the shares in which the monies in the account were held being that described in paragraph 50 above.

54. Accordingly, Mr Churchill submitted, when Mrs Pflum used the debit card in the United Kingdom what was being remitted to the UK were funds solely owned by her and there was no remittance by Mr Pflum, or any remittance made with his authority. Mr Pflum would be unaware as to when Mrs Pflum might draw on the

account. The funds were not remitted to the UK until Mrs Pflum exercised her authority to draw monies from the account.

55. Mrs Teggart submitted that the monies held in the Isle of Man Account had never lost their character as Mr Pflum's property as they had been derived solely from his earnings, and consequently all sums withdrawn in the UK, either through transfers, direct debits or the use of the debit card were to be regarded as remittances by Mr Pflum to the UK of the sums so withdrawn. The conduct of the account was not sufficient to have caused Mr Pflum to have alienated his beneficial interest in the monies. HMRC's analysis of the legal position was that the account was held as a joint tenancy at law and the joint tenancy had not been severed. Consequently, the sums standing to the credit of the account were a debt owed by the bank to the account holders jointly and was not enforceable by either or his own: see *Catllin v Cyprus Finance Corp (London) Ltd* [1983] 1 AER 809. Consequently, when the monies were remitted to the UK they were to be regarded as remittances by Mr Pflum, as one of the joint holders of the account.

Conclusion

56. We reject HMRC's submissions on the nature of a joint bank account. During the hearing we drew the attention of the parties to the case of *Re Bishop* [1965] Ch 450, which had not been cited to us. The facts of that case were that a husband and wife opened a joint bank account to which they both contributed unequal amounts out of their own resources. The account was not opened for any specific purpose. Monies were withdrawn at will by both spouses for their own purposes, and for housekeeping and investment purposes. A feature of the account was lack of any

pattern of payments from it. The question to be determined was whether any investments bought by the husband out of the monies in the account were owned solely by him or were owned jointly with his wife. In holding that the investments concerned were owned solely by the husband, Stamp J at Page 456 of the judgment said:

> "Where a husband and wife open a joint account at a bank on terms that cheques may be drawn on the account by either of them, then, in my judgment, in the absence of facts or circumstances which indicate that the account was intended, or was kept, for some specific or limited purpose, each spouse can draw upon it not only for the benefit of both spouses but for his or her own benefit. Each spouse, in drawing money out of the account, is to be treated as doing so with the authority of the other and, in my judgment, if one of the spouses purchases a chattel for his own benefit or an investment in his or her own name, that chattel or investment belongs to the person in whose name it is purchased or invested: for in such a case there is, in my judgment, no equity in the other spouse to displace the legal ownership of the one in whose name the investment is purchased. What is purchased is not to be regarded as purchased out of a fund belonging to the spouses in the proportions in which they contribute to the account or in equal proportions, but out of a pool or fund of which they were, at law and in equity, joint tenants".

57. We see no reason why these principles should not apply to an account held by any two persons, whether or not they are husband and wife. If HMRC are right, and the joint tenancy in the Isle of Man Account has not been severed, it appears to us that the funds held in such account where there is no restriction on the ability of either holder to draw on them, are available to either party and any asset acquired with them will belong to the party making the relevant withdrawal. The essence of joint ownership of a bank account where withdrawals can be made without restriction by either party is that the sums belong to the party who withdraws them, and this principle underlies the decision in *Re Bishop*.

58. Applying this principle to the present case, the monies held in the account must be regarded as being at the joint disposal of Mr and Mrs Pflum which means when the mandate is such that either party can draw on them, that either party is free to withdraw and spend them as he or she wishes. In practice most withdrawals were made by Mrs Pflum without reference to Mr Pflum. Thus when she withdrew sums in the UK using the debit card, the cash so withdrawn would be her own money and she was drawing on an asset which was just as much her own asset as it was Mr Pflum's. That is the essence of a joint bank account held by the holders as joint tenants. We therefore reject Mrs Teggart's submission that because the monies were derived from Mr Pflum's earnings he was to be regarded as not having alienated them, in the absence of clear evidence of an intention to sever the joint tenancy and confer beneficial ownership on Mrs Pflum. The application of this principle also leads to the same conclusion in relation to purchases made through use of the debit card in the UK.

59. The consequence of this finding is that none of these withdrawals and purchases is to be regarded as remittances by Mr Pflum to the UK for the purposes of Section 26 of ITEPA.

60. In the light of this analysis, it has not been necessary for us to consider whether the joint tenancy was severed in the manner submitted by Mr Churchill, but on the basis of the facts that we have found, our conclusion is that it was intended that the monies held in the account were held for Mrs Pflum's sole benefit, subject to payments in respect of Mr Pflum's liability under the direct debits identified above,

with the result that the withdrawals and purchases made in the UK by Mrs Pflum should not be regarded as remittances to the UK by Mr Pflum.

61. Consequently our decision is that Mr Pflum has been overcharged by the amendments made to his self-assessment returns for the year ended 5 April 2007 and the year ended 5 April 2009 by the inclusion of the 2006-2007 disputed remittances and the 2007-2008 disputed remittances. The appeal is allowed and those assessments should be reduced accordingly.

62. 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.

TIMOTHY HERRINGTON
TRIBUNAL JUDGE

RELEASE DATE: 1 June 2012

APPENDIX

Sections 25, 26 and 33 of the Income Tax (Earnings and Pensions) Act 2003

25. UK based earnings for year when employee resident, but not ordinarily resident, in the UK

(1) This section applies to general earnings for a tax year in which the employee is resident but not ordinarily resident in the United Kingdom if they are –

(a) general earnings in respect of duties performed in the United Kingdom, or

(b) general earnings from overseas Crown employment subject to United Kingdom tax.

(2) The full amount of any general earnings within subsection (1) which are received in a tax year is an amount of "taxable earnings" from the employment in that year.

(3) Subsection (2) applies-

(a) whether the earnings are for that year or for some other tax year, and
(b) whether or not the employment is held at the time when the earnings are received.

(4) Section 28 explains what is meant by "general earnings from overseas Crown employment subject to United Kingdom tax".

26. Foreign earnings for year when employee resident, but not ordinarily resident, in the UK

(1) This section applies to general earnings for a tax year in which the employee is resident, in the United Kingdom if they are neither –

(a) general earnings in respect of duties performed in the United Kingdom, nor

(b) general earnings from overseas Crown employment subject to United Kingdom tax.

(2) The full amount of any general earnings within subsection (1) which are remitted to the United Kingdom in a tax year is an amount of "taxable earnings" from the employment in that year.

(3) Subsection (2) applies-

(a) whether the earnings are for that year or for some other tax year, and

(b) whether or not the employment is held at the time when the earnings remitted; but that subsection has effect subject to any relief given under section 35 (delayed remittances: claim for relief).

(4) Section 28 explains what is meant by "general earnings from overseas Crown employment subject to United Kingdom tax".

33. Earnings remitted to UK

(1) This section explains what is meant for the purposes of this Chapter by general earnings being remitted to the United Kingdom.

(2) If general earnings are-

(a) paid, used, or enjoyed in the United Kingdom, or

(b) transmitted or brought to the United Kingdom in any manner or form,

they are to be treated as remitted to the United Kingdom at the time when they are so paid, used or enjoyed or dealt with as mentioned in paragraph (b).

Section 50(6) of the Taxes Management Act 1970

(6) If, on an appeal notified to the tribunal, the tribunal decides –

(a) that the appellant is overcharged by a self-assessment;

(b) that any amounts contained in a partnership statement are excessive; or

(c) that the appellant is overcharged by an assessment other than a self-assessment, the assessment or amounts shall be reduced accordingly, but otherwise the assessment or statement shall stand good.