[2011] UKFTT 512 (TC)

TC01359

Appeal number: TC/2010/08557

Income tax – interest – joint account owned by husband and wife – whether necessary for beneficial interests in funds to be known before tax could be imposed on interest income – held, no – whether beneficial interests unknown – held, on equitable principles, standard division applicable – appeal dismissed

FIRST-TIER TRIBUNAL

TAX

PROFESSOR A.K. HALPIN **Appellant**

- and -

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

TRIBUNAL: JOHN CLARK (TRIBUNAL JUDGE)
SUSAN HEWETT

Sitting in public at Southampton on 8 June 2011

The Appellant in person

David Lewis, Appeals Unit, HM Revenue and Customs, for the Respondents

DECISION

1. Professor Halpin appeals against an assessment to additional income tax in respect of bank and building society interest omitted from his self assessment tax return for the year to 5 April 2007. He contends that, for the reasons set out below, he is not assessable on that income.

The facts

2. The evidence before us consisted of a bundle of documents which included correspondence between Professor Halpin and the Respondents ("HMRC"). In addition, Professor Halpin provided information in the course of the presentation of his case, and where appropriate we have taken this as further evidence. From all the evidence we find the following facts.

3. On 30 September 2009 Mr Allen, an officer of HMRC, wrote to Professor Halpin to explain that he was checking Professor Halpin's self assessment for the year to 5 April 2007 in the light of a comparison of information received from financial institutions with HMRC's own records. Mr Allen indicated that the return showed bank and building society interest of £0.00, but that the information available to him showed the amount of such interest as £5,226.42. He stated: "There may be a simple explanation why these figures do not agree but I would like you to check your figures and let me know the outcome."

4. On 21 October 2009 another HMRC officer, Mr Jobes, wrote to Professor Halpin. He referred to a telephone call which Professor Halpin had made to Mr Allen relating to the legislation under which investment income from bank and building society interest is split 50:50 between a married couple. After referring to the legislation (considered below) he asked Professor Halpin to indicate why his share of the interests from the joint accounts concerned should not be assessed on him.

5. The correspondence continued with exchanges of views on the tax treatment of interest income in joint accounts. Professor Halpin contended that as the beneficial interest in the money contained in a joint account could not be known until one, other or both the holders removed the money from the account, it could not be known until then which of them was entitled to the interest; it followed that he could not be taxable on interest which he had not received. (The arguments are considered below.) On 17 December 2009 Mr Jobes wrote to Professor Halpin. In that letter he stated his decision that half of the interest credited to the accounts held in joint names for the year ended 5 April 2007 "was your tax liability", and he enclosed a copy of the assessment raised for the additional tax due in respect of Professor Halpin's half share of the interest. He also stated that interest was due on the additional tax; interest had been calculated from 31 January 2008 up to the date of the letter, and would continue to increase on a daily basis until the tax was paid.

6. Professor Halpin gave notice of appeal to Mr Jobes on 17 December 2009. Further correspondence ensued between him and HMRC. After a degree of confusion, HMRC offered a statutory review. This was carried out by Martin Jackson of

HMRC's Appeals and Reviews Unit. Mr Jackson wrote to Professor Halpin with the results of the review on 5 October 2010. The decision on review was that HMRC's view as to Professor Halpin's liability to tax on the interest was to be upheld. (The basis for HMRC's view is considered below.) On 4 November 2010 Professor Halpin gave Notice of Appeal to the Tribunal.

The legislation

7. Section 282A of the Income and Corporation Taxes Act 1988 ("ICTA 1988"), which applied in 2006-07 (and was rewritten for subsequent years in s 836 of the Income Tax Act 2007) provided:

> "**282A Jointly held property**
>
> (1) Subject to the following provisions of this section, income arising from property held in the names of a husband and his wife, or in the names of civil partners of each other, shall for the purposes of income tax be regarded as income to which they are beneficially entitled in equal shares.
>
> (2) Subsection (1) above shall not apply to income to which neither the husband nor the wife, or neither of the civil partners, is beneficially entitled.
>
> (3) Subsection (1) above shall not apply to income—
>
> > (a) to which either the husband or the wife, or one of the civil partners, is beneficially entitled to the exclusion of the other, or
> >
> > (b) to which they are beneficially entitled in unequal shares,
>
> if a declaration relating to it has effect under section 282B.
>
> . . .
>
> (5) Subsection (1) above shall not apply to income to which the husband or the wife, or one of the civil partners, is beneficially entitled if or to the extent that it is treated by virtue of any other provision of the Income Tax Acts as the income of the other of them or of a third party.
>
> . . ."

8. Sections 369, 370 and 371 of the Income Tax (Trading and Other Income) Act 2005 ("ITTOIA 2005") provide as follows:

> "**369 Charge to tax on interest**
>
> (1) Income tax is charged on interest.
>
> . . .
>
> **370 Income charged**
>
> (1) Tax is charged under this Chapter on the full amount of the interest arising in the tax year.
>
> . . .

> **371 Person liable**
>
> The person liable for any tax charged under this Chapter is the person receiving or entitled to the interest."

Professor Halpin's arguments

9. Professor Halpin emphasised the need for legislative and lawful authority for tax to be imposed. The appeal related to raising income tax. This was raised on the income of a person. The principle was that "I am liable to pay tax on *my* income". Parliament could give authority for income tax to be raised on another person's income, but the authority would have to be absolutely clear. He submitted that there was no lawful authority for income tax to be charged on something that was not his income.

10. He referred to a basic distinction; HMRC had failed to engage the issues. The distinction was between ownership in common and joint ownership. The latter concept was somewhat mystical. Both owners jointly owned, yet might not be able to do what they wanted with the property. When one joint owner died, there was nothing to pass on death. If two owners said that they did not want to own the property jointly, it thereby became subject to ownership in common. Until joint ownership was severed (so as to convert it to ownership in common) there was no beneficial ownership. In the case of joint property neither owner had equity in the property and neither owner had beneficial ownership.

11. The dispute related to the ownership of money within a joint account. He argued that the attempt by HMRC to charge the interest to income tax in his hands was unlawful. The charge to tax was on income arising (as specified in s 282(1) ICTA 1988), and therefore until it had arisen, there was no basis for liability; there was no income arising to a person who would be liable for income tax. In his response dated 3 February 2010 to the letter dated 18 January 2010 from Mr Conner, a further HMRC officer, Professor Halpin had argued that neither of the joint owners had received anything: at most, they had a contingent interest. Neither had an interest or entitlement.

12. In the review letter Mr Jackson had diverted the scope of the contingency to income arising in an account, arguing that once this contingency had been met there was liability to income tax because the relevant legislation (ITTOIA 2005) "does *not* refer to the interest arising to an individual". Professor Halpin argued that the contingency was the joint ownership. Thus HMRC had not engaged with the argument.

13. He referred to the HMRC Manual "Independent Taxation Handbook" at paragraph IN126. This acknowledged that where property was in the joint names of husband and wife or civil partners of each other the determination of their beneficial interests under general law could be very complex. At the end of the summarised explanation, the paragraph indicated that HMRC officers should refer to HMRC

Trusts Head Office where there were problems that officers could not deal with by reference to that explanation. Professor Halpin submitted that the "evasion" met in the course of his correspondence was unsurprising; it was reflected in this paragraph of the HMRC Manual. He questioned how a statutory provision could be applied in this context. He argued that the reference to husband and wife being "entitled jointly to the whole of the funds" was not correct; there was no such joint entitlement. There was no beneficial or equitable interest. He referred to an extract from Halsbury's Laws Volume 16(2) (Reissue): Equity at paragraph 608. He argued that joint ownership did not amount to equitable interests in property.

14. Thus HMRC had failed to acknowledge the critical distinction between joint ownership and ownership in common. There needed to be an account and income arising to a person. Section 371 ITTOIA 2005 did not refer to contingencies. In s 282A(1) the key precondition was "income arising". The Act and its provisions were not engaged. Section 282A(2) disapplied sub-s (1) where "neither the husband nor the wife . . . is beneficially entitled". Therefore there was no statutory authority for the requirement to pay income tax.

15. In response to the Tribunal's question whether his submission meant that there were no beneficial interests at all, he confirmed this; there would have to be a trust for beneficial interests to exist. If there were a trust, the respective owners would have claims against each other.

Arguments for HMRC

16. Mr Lewis submitted that the Review Officer's letter put HMRC's argument quite well. Professor Halpin had submitted his return: he had omitted the interest. He was a higher rate taxpayer. Mr Jobes had written to him with a revised tax calculation based on the information provided by the two financial institutions. Professor Halpin had argued that he was not liable; his wife could have withdrawn the whole or part of the income, so that HMRC could have no claim.

17. HMRC had argued that income arose when the account holders were free to draw on the account. The HMRC view was that income tax could be charged on the interest, as both parties were entitled to the income when it was in the account. There was an actual entitlement. Section 282A ICTA 1988 applied a 50:50 split to the income for tax purposes.

18. The Tribunal asked Mr Lewis about the beneficial entitlement; was it contingent? Mr Lewis submitted that it was not. If Professor Halpin's argument was correct, it would have the result that tax should not be deducted at source from interest on joint accounts of this nature because the precondition for imposing the tax charge would not be met. Mr Lewis submitted that a party had a beneficial interest in the income when he or she could use it as he or she chose; both parties became entitled and therefore the interest became chargeable.

19. He referred to *Dunmore v McGowan* [1978] STC 217 (CA) and *Parkside Leasing v Smith* (1984) 58 TC 282. HMRC's case was that when interest was credited to the

joint account, it became taxable under ss 370 and 371 ITTOIA 2005, and under s 282A ICTA 1988 Professor Halpin was to be treated as entitled to half of the interest when it was credited. Accordingly the higher rate tax assessed on Professor Halpin in respect of the interest was due.

Discussion and conclusions

20. In his initial letter to Mr Jobes dated 16 November 2009, Professor Halpin stated:

> "The legislative provisions (see s 836(1) of the Income Tax Act 2007) are only engaged if "income arises" from the joint account. In a case where the interest from the money held in a joint account accrues within that joint account, I cannot see how any income has yet arisen – on the assumption that the income in this context is required to be incoming to a person."

21. We regard that assumption as crucial to Professor Halpin's argument. Before considering the question of the beneficial interests in the joint account and any income generated by it, we think it essential to test the validity of that assumption. If beneficial interest in the income is not a precondition to imposition and therefore liability to income tax on that income, the question of beneficial interest becomes a subsidiary issue, notwithstanding Professor Halpin's argument to the contrary.

22. The appropriate order in which to consider the issues is first to review the charging provisions, secondly to examine the basis for attribution of liability, and finally to test Professor Halpin's argument relating to absence of beneficial interest.

23. Section 369 ITTOIA 2005 imposes a charge to income tax on interest. It does not identify the person on whom that charge is imposed. In similar fashion, s 370(1) ITTOIA 2005 confirms that tax is charged under Chapter 2 of Part 4 on the full amount of interest arising in the tax year; again it does not specify the person. The identification of the chargeable person is made by s 371 ITTOIA 2005, ie "the person receiving or entitled to the interest".

24. The tests under the latter section are alternatives to each other. The initial question, without considering entitlement, is whether, when the interest was credited by the respective financial institutions to the respective joint accounts, Professor Halpin and his wife "received" it.

25. In *Dunmore v McGowan* (CA) the taxpayer had entered into a written guarantee in favour of a bank. He guaranteed to pay on demand all moneys then or thereafter owing to the bank by a property company with which he was concerned. He subsequently opened a deposit account, to which certain sums were credited and a sum was debited. Shortly afterwards he wrote to the bank authorising it to transfer to a deposit account in its name sums to be received from the liquidator of the company. When he signed the letter, he was unaware of the credits already made to the first deposit account. Interest was credited to this first deposit account. The sum standing to the credit of the first deposit account was later transferred to the deposit account in the bank's name. Interest was credited to this account, and to a third deposit account

in the taxpayer's name. The second account was closed once the company's indebtedness to the bank had been discharged. Assessments to income tax were made on the taxpayer in respect of the interest credited to all the deposit accounts.

26. The taxpayer pursued the argument which had previously been put in the High Court, contending that the money in the second deposit account was held by the bank as trustee during the existence of the guarantee and that in any event, under the terms of the June 1967 letter, he did not receive and was not entitled to any interest, since he could not at any time claim it.

27. Stamp LJ, giving the judgment of the Court of Appeal, stated his agreement with Brightman J's judgment:

> "I agree entirely. Just as the £28,000 deposited with the bank was a debt due by the bank to the taxpayer subject to any claims that might arise under the guarantee, so on the interest being credited to the deposit account did the interest acquire the same characteristics. The interest was received or 'got' when it was credited to the deposit account, an account of money which was at all times owed by the bank to the taxpayer, albeit charged in support of the guarantee.
>
> Counsel for the taxpayer submitted that the taxpayer would only receive the interest credited to the account if the bank turned out to be solvent. In my view this confuses payment with receipt in the sense in which that word is used in the relevant parts of the Income Tax Acts. The interest which is credited to my deposit account is received by me at the date when it is so credited, notwithstanding that it may not be paid to me until a future date, and it is just as much mine whether it is or is not paid to me."

28. Thus Mr Dunmore "received" the interest, irrespective of what happened to the moneys in the deposit account opened in the bank's name. We consider that Professor Halpin and his wife "received" the interest when it was credited to their two joint accounts, whatever might happen subsequently to the funds in those accounts. As they "received" the interest, it was liable to tax in their hands. There is no need in our view to address the alternative test of entitlement under s 371 ITTOIA 2005.

29. Professor Halpin argued that he and his wife could not be said to have "received" the interest, given that the destination of the monies in the joint accounts would remain uncertain unless and until he or his wife drew on them. However, this addresses the question of entitlement rather than that of receipt. By analogy, trustees can be in *receipt* of interest income and chargeable to tax on it in circumstances where they have no *entitlement* to monies held in the trust because the funds are held for the benefit of other persons. Interest was credited to the Halpins' joint accounts, held in their joint names, and we hold that, for the purposes of s 371 ITTOIA 2005, they "received" that interest.

30. As they were joint recipients of that income, s 282A ICTA 1988 has to be applied in order to determine the extent to which each of them respectively is liable to tax in respect of it. Section 282A(1) provides the basic working assumption; in the absence of other factors, investment income such as interest is, for the purposes of income tax,

to be regarded as income to which they are beneficially entitled in equal shares. This working assumption can be displaced. Under s 282A(2), if the actual beneficial entitlement is different, either because the husband or the wife is beneficially entitled to the exclusion of the other, or because their beneficial entitlement is in unequal shares, sub-s (1) does not apply if the joint holders make a declaration under s 282B ITTOIA 2005. (Another example of the assumption being displaced is under s 282A(5), set out above.)

31. It is clear from the structure of s 282A that it is not making assumptions based on actual beneficial entitlement. If Professor Halpin had opened a joint account in the names of himself and his wife on terms that the whole beneficial interest in the funds and the interest arising on those funds belonged to him, but he and his wife had agreed not to make an election under s 282B, the normal working assumption under s 282A(1) would apply so as to treat them for income tax purposes as beneficially entitled in equal shares. (Whether other provisions of the Income Tax Acts would have operated to displace the assumption is beyond the scope of the matters under consideration in this appeal.) We see our conclusion as to the lack of relevance of actual beneficial entitlement as consistent with our view as to "receipt" in the context of s 371 ITTOIA 2005.

32. In the course of his correspondence, referred to in argument before us, Professor Halpin had queried the meaning of "arising" in s 370 ITTOIA 2005. This was on the basis of his argument that if there was no beneficial entitlement, income could not be said to be "arising". For the reasons we have set out already, we do not accept that argument; in particular, receipt is sufficient without beneficial entitlement. Interest arises when it is credited to an account, and therefore at that point it is treated as received by the account holder or holders. In *Parkside Leasing v Smith* Scott J stated:

> "Money credited to a person's bank account in accordance with his instructions must, in common sense and in law, be regarded as money thereby received by that person. The money is thereby placed at the disposal of that person."

We consider that when the interest was credited to the Halpins' joint accounts, it was placed at their joint disposal, with the tax consequences as we have set out above.

33. In arriving at our conclusions, we have found telling the point discussed in the course of Mr Lewis' argument (and previously raised by Mr Conner of HMRC in his letter dated 4 February 2010); if Professor Halpin's argument were to prove correct, the consequence would be that in relation to all joint accounts, no income tax could be charged, and no tax deducted at source, because of the uncertainty as to the respective beneficial interests. Indeed, a joint account could remain untaxed for many years if no funds were withdrawn from it. We shrink from a conclusion that would involve declaring illegal the deduction of income tax at source from all joint accounts where the holders' interests were not specified. For this and the above reasons we are persuaded that Professor Halpin's argument is not correct.

34. Although we have found it unnecessary to address the question of the beneficial interests in the joint account, we think it appropriate to consider whether the

proposition underlying Professor Halpin's argument is correct. Various points made in Snell's Equity cast doubt on that proposition, whatever the position may be at law rather than in equity. The first is the equitable maxim "equality is equity". Equity assumes in the absence of any specific indication to the contrary that the underlying beneficial ownership in a joint asset is divided equally between joint tenants. Equity imposes a presumption of tenancy in common, reflecting equity's dislike of a joint tenancy. The approach of equal division can be seen in such cases as *Jones v Maynard* [1951] Ch 572.

35. That case concerned investments purchased by the husband with money drawn from the spouses' joint account. Vaisey J expressed the following views:

> "In my judgment, when there is a joint account between husband and wife, and a common pool into which they put all their resources, it is not consistent with that conception that the account should thereafter (in this case in the event of a divorce) be picked apart, and divided up proportionately to the respective contributions of husband and wife, the husband being credited with the whole of his earnings and the wife with the whole of her dividends. I do not believe that, when once the joint pool has been formed, it ought to be, and can be, dissected in any such manner. In my view a husband's earnings or salary, when the spouses have a common purse, and pool their resources, are earnings made on behalf of both; and the idea that years afterwards the contents of the pool can be dissected by taking an elaborate account as to how much was paid in by the husband or the wife, is quite inconsistent with the original fundamental idea of a joint purse or a common pool.
>
> In my view the money which goes into the pool becomes joint property. The husband, if he wants a suit of clothes, draws a cheque to pay for it. The wife, if she wants any housekeeping money, draws a cheque, and there is no disagreement about it.
>
> That being my view, it follows that investments paid for out of the joint account, although made in the name of the husband, were in fact made by him in his own name as a trustee as to a moiety for his wife. If the investments out of the joint account had been made in the name of the wife alone, there is no doubt that the ordinary presumption of law would have applied and she would have been entitled to the investments; but as they were made in the name of the husband, it seems to me that the assumption of half and half is the one which I ought to apply.
>
> I think that the principle which applies here is Plato's definition of equality as a "sort of justice": if you cannot find any other, equality is the proper basis. When moneys were taken out of the joint account for the purpose of making an investment, the intention which I attribute to the parties is equality, and not some proportional entitlement to be arrived at by an inquiry as to the amounts contributed respectively by the husband and wife to the common purse. Where one is searching for justice, as one must, and cannot find any other secure and sound basis, I think that equality is the best rule."

36. We accept that there have been significant developments in matrimonial cases since this decision, but these developments do not affect the fundamental proposition that in the absence of any indication to the contrary, the beneficial interests in a joint account held as between husband and wife are assumed to be equal. We hold that Professor Halpin's underlying proposition, that the beneficial interests in a joint account owned by spouses are unknown until the funds are drawn on and therefore the interest income cannot be taxable in the hands of either holder until the funds are drawn on, is incorrect.

37. For all the reasons set out above, we dismiss Professor Halpin's appeal.

Right to apply for permission to appeal

38. 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.

JOHN CLARK

TRIBUNAL JUDGE
RELEASE DATE: 26 JULY 2011