Flexible benefit arrangements: a redirection of earnings

Employment Tax

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A redirection of earnings

The Rangers case (*The Advocate General for Scotland v Murray Group Holdings Ltd* [2015] CSIH 77) is discussed in some detail in *Plan B for the Light Blues*. After HMRC's victory in the Court of Session in this case last year, the CIOT has raised a point with HMRC in relation to flexible benefit arrangements and the court's acceptance of HMRC's argument on redirection of earnings.

Although the case concerned employee benefit trusts (EBTs), with the Court of Session finding that the arrangements to 'pay' players by way of loans did not work, a concern has been raised as to how HMRC might apply the argument made by its counsel, and accepted by the Court of Session, on what was referred to as 'redirection of earnings'. The court held that the focus on the minutia of the EBT arrangements and the discretion of the EBT trustees. was a red herring and that, in any event, the contributions to the EBT by Rangers were taxable as earnings. Therefore, they should be subject to PAYE at the point of payment to the EBT because HMRC considered that they were merely a re-direction of the earnings, made with the players' acquiescence.

We understand that action has been initiated to appeal against the decision. But concerns have arisen for employers with flexible benefit arrangements that, when employees waive an amount of salary in return for benefits or indicate a preference for how any non-contractual discretionary bonus might be conveyed, this may now be a 'redirection of earnings'. If so, this would seem to mean employers would need to apply PAYE/NIC on the salary or bonus that would have been paid to the employee in the absence of the flexible benefit arrangement, regardless of whatever benefit was provided for employees (for example additional pension contributions, a mobile

phone or environmentally friendly car).

HMRC is unlikely to make any statement about its view of the scope of application of the Rangers case until a final resolution is reached. But the CIOT has been reassured that any new view applicable to flexible benefit arrangements would be a significant change of HMRC policy and that, if such a policy change arose, it would be properly announced with prospective effect.