Rupert Grint and the failed tax scheme: the 'sales of occupation' income rules

Personal tax



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We examine a case which considers the 'sales of occupation income' rules, and highlights the limited scope of legislation that applies only to taxpayers engaged in a profession or vocation.

Key Points

What is the issue?

Rupert Grint, an actor, sold his future earnings to a company, Clay 10, for £8.5 million, treating £4.5 million of it as capital and claiming entrepreneurs' relief. HMRC challenged this, arguing that the transaction should be treated as income under s 778 of the Income Tax Act 2007. Grint appealed, arguing that the

transaction was not for tax avoidance purposes, a key condition for the application of Chapter 4 rules.

What does it mean for me?

The First-tier Tribunal found that tax avoidance was a main object of the transaction, thus engaging Chapter 4 rules. However, the judge agreed with Grint that the value of the transaction was derived from his activities, aligning with s 779 rather than s 778. Despite this, the judge concluded that HMRC was not precluded from relying on s 779 due to the closure notice's context.

What can I take away?

The case illustrates the importance of demonstrating non-tax purposes in transactions proposed by tax advisers. It serves as a reminder of how anti-avoidance legislation is applied, particularly concerning the 'main purpose' test.

Much of the Income Tax Act 2007, Parliament might be proud to say, is perfectly normal, thank you very much. Its provisions are regularly referred to and are generally well-known, at least by the taxpayers affected by them (and their advisers). However, I would put Chapter 4 of Part 13 into a different category.

The provisions have sometimes been referred to as 'The Beatles clause', as they were introduced in response to tax planning arrangements that were widely thought to have been implemented by a popular beat combo of the same name that was active in the 1960s. The essence of the provisions is to ensure that income is not converted into capital and therefore subject to lower rates of tax.

Although one might expect Parliament to object to any taxpayer artificially converting income to capital for tax purposes, Chapter 4 has a more limited scope. In particular, it is one of the few remaining areas of the tax code which distinguishes between taxpayers who carry on a trade and those who carry on a profession or vocation; per s 774, it is only the latter category of taxpayer who is caught by the rules.

Furthermore, even without special rules, the courts have repeatedly concluded that a professional author (say) who receives a capital sum for the sale of copyright will generally be subject to income tax on the proceeds, notwithstanding the one-off

nature of the disposal (see, for example, *Wain's Executors v Cameron (HM Inspector of Taxes)* [1995] STC 555). That has only added to the mystique surrounding the Chapter 4 rules.

In practice, the rules have been assumed to be limited to those in the creative arts and have operated as a 'keep off the grass' warning to discourage such taxpayers from entering into more complex arrangements. To be fair, the warning has been largely effective, meaning a dearth of cases in which the provisions have been cited. Indeed, the first time I ever saw them cited by HMRC was about a decade ago and that was a rather desperate (and ultimately unsuccessful) attempt by HMRC to convert what was a genuine capital transaction into one that attracted income tax. However, that experience told me that HMRC had not forgotten about the rules and was perhaps planning to use the rules to challenge arrangements in other cases. And, as the case law has shown, there has since been a smattering of case law in which the Chapter 4 rules make at least a cameo appearance.

The latest such case is *Rupert Grint v HMRC* [2024] UKFTT 956 (TC).

The facts of the case

Mr Grint is an actor who starred in a series of high-profile films that were produced between 2001 and 2011. The nature of those engagements meant that Mr Grint was likely to receive future income arising from his earlier services, as well as the opportunity to earn further income from spin-off activities.

In October 2011, a company ('Clay 10') was incorporated. Shortly afterwards, Mr Grint sold to Clay 10 his rights to those future earnings for a sum of approximately £8.5 million. That sum was not paid to Mr Grint but was instead left as a debt owed to him by Clay 10.

Of the £8.5 million, £4 million was attributed to existing contractual rights accruing to Mr Grint and was treated as income; i.e. representing proceeds from Mr Grint's profession as an actor. The balance of £4.5 million related to the disposal of other intangible rights to Clay 10 and was treated as capital in nature. Not only did Mr Grint pay capital gains tax on this sum but he also claimed entrepreneurs' relief in his tax return for the 2011/12 tax year.

HMRC subsequently opened an enquiry into the 2011/12 tax return. When it issued a closure notice in 2019, it concluded that the £4.5 million should be treated as income under the Income Tax Act 2007 s 778.

Mr Grint subsequently appealed against the closure notice and soon afterwards notified the appeal to the tribunal. His principal argument was that Chapter 4 did not apply because the 2011 disposal was not effected for tax avoidance purposes (and therefore did not satisfy one of the fundamental conditions for the rules to apply as set out in s 773(2)(b)).

In the course of the appeal, HMRC also raised the argument that, if s 778 did not apply, then the transactions were caught instead by s 779. Sections 778 and 779 operate as alternatives. As their headings explain, s 778 applies ‘where [a] capital amount other than derivative property or [a] right [is] obtained’, whereas s 779 applies ‘where derivative property or [a] right [is] obtained’. The references to derivative property or right pose the question as to whether the capital receipt by the taxpayer consists of property that derives substantially the whole of its value from the individual’s activities. In other words, on the facts of this case, whether the value of Clay 10’s debt to Mr Grint derived substantially from Mr Grint’s activities (past or future).

The First-tier Tribunal’s decision

The case came before Tribunal Judge Harriet Morgan.

The first issue that the judge had to consider was whether the arrangements were caught by the tax avoidance motive test in s 773(2)(b). The judge noted the distinction between cases where obtaining the tax saving was a *purpose* of the transaction in question and those where the tax saving was merely an *effect* of the transaction. The judge noted that the subjective intentions of the key parties (Mr Grint and his late father, who was advising his son who was relatively young at the time) were critical in determining the purpose of the arrangements. So far as the Grints’ professional advisers are concerned, the judge concluded that they were relevant only so far as they shed light on the intentions and purposes of Mr Grint and his late father.

The judge readily accepted that the arrangements (effectively, incorporating Mr Grint's professional activities) gave Mr Grint the commercial benefit of limited liability and that this was an object of entering into the arrangements. The judge also acknowledged the administrative convenience that the use of the company might have facilitated but she did not consider that to be any more than a subsidiary and minor object. However, the judge also considered that the tax saving was also a main object of the transaction. This conclusion appears to have been largely based on the fact that the principal drivers for the arrangements were the professional tax advisers working with the Grints and not the Grints' commercial lawyers. Thus, the first issue was decided in HMRC's favour.

As this meant that the Chapter 4 rules were engaged, the judge then had to consider the second issue which was which of the Chapter 4 rules operated here – whether it was s 778 or s 779. On this point, the judge agreed with Mr Grint. It was clear that the value of the £4.5 million consideration received by him was substantially derived from Mr Grint's activities. HMRC had argued that the £4.5 million was merely the fixed sum agreed for Mr Grint's disposal and therefore its value could not be derived from Mr Grint's activities. However, the judge concluded that such an interpretation would render s 779 virtually meaningless.

Having accepted Mr Grint's argument on this point, the judge then had to consider the third issue, which was whether the wording on HMRC's closure notice (which referred only to s 778 and did not invoke s 779) meant that HMRC had forgone the opportunity to challenge Mr Grint's arrangements.

The judge considered the various case law concerning the scope of appeals against closure notices, in particular, the Supreme Court's decision in *Tower MCashback LLP 1 v HMRC* [2011] STC 1143 (see also my article in the April 2010 issue of *Tax Adviser*). That case recognised that a closure notice circumscribes the issues that might be raised in any subsequent appeal – for example, a closure notice which adjusts the amount of bank interest received cannot then lead to a dispute about capital gains tax. However, it was also made clear by the Supreme Court that, where a particular amendment has been made, there is nothing to stop that amendment being justified by HMRC for reasons not articulated in the closure notice. Ultimately, the question boils down to the interpretation of the closure notice.

Looking at the context of Mr Grint's closure notice and the enquiry which preceded it, the judge concluded that the closure notice should be interpreted as saying that

HMRC had concluded that the Chapter 4 rules applied, primarily on the basis that the arrangements fell within s 778. As a result, the judge concluded that HMRC was not precluded from relying on s 779 as an alternative basis for saying that Chapter 4 was engaged.

For these reasons, Mr Grint's appeal was dismissed.

Commentary

There are (possibly) apocryphal stories some decades ago of instructions being sent to tax counsel setting out details of a proposed tax-motivated transaction, with counsel being instructed to draft commercial reasons that might justify the proposed course of action.

The *Grint* case was definitely a long way from that – there were clearly commercial benefits of transferring the rights to Clay 10 and HMRC's arguments seeking to downplay them were rejected by the judge. However, the case shows that it is not sufficient to have a commercial driver behind the transaction; the legislation is engaged if tax avoidance was merely one of the main objects.

What undermined Mr Grint's case was the fact that the idea of the arrangements seems to have been derived from the Grints' tax advisers. It might, as a matter of fact, be the case that the tax advisers were solely motivated by the commercial advantages of the transfer to Clay 10 and were merely conscious that such a transfer was not disadvantageous so far as tax is concerned. However, the judge did not infer that to be the case and it seems that her conclusion was one she could fairly reach on the facts. Despite the amount of tax at stake, I do not think that an appeal is likely to proceed on this point.

I also think that the tribunal's decision on whether s 778 or 779 applies could not realistically be challenged.

Will the third issue, however, generate an appeal? After all, it is a discrete point which ought not take too long to argue. Indeed, the closure notice read: 'I have amended your tax return by treating the capital amount you received on the sale of your business as income arising under s 778 ITA 07.'

That appears to be sufficiently unambiguous to preclude any prospect of s 779 applying. However, the judge also referred to a covering letter which noted that the officer had taken the view that s 778 was the correct charging provision but kept alive the prospect of s 779 applying instead. The alternative approaches had also been articulated in the previous correspondence.

On balance, I think that the judge reached the right conclusion, although I can certainly see scope for the alternative view. A closure notice itself cannot contain two conflicting conclusions. Given that the officer had clearly (and at the same time) referred to the alternative analysis, the closure notice was interpreted as effecting an income tax charge under Chapter 4 with s 778 as merely the first of two possible routes to that conclusion. However, it might have been more helpful all around had the closure notice been more carefully worded.

What to do next

The case is a useful reminder as to how the tribunal is likely to apply anti-avoidance legislation which contains a ‘main purpose’ (or similar) test. Of course, just because an idea is proposed by a tax adviser, it does not necessarily mean that tax avoidance is the main purpose or one of the main purposes of any subsequent transaction. For example, it is not unreasonable for tax advisers to be expected to look at a client’s wider commercial position. However, in such cases, it will be essential to do more than merely show non-tax purposes for the transaction: it will be necessary to show why, notwithstanding the fact that it was proposed by a tax adviser, there were no actual tax reasons for entering into it.

The case also highlights the importance of correctly construing a closure notice. Mr Grint was completely right to raise the argument that the closure notice was seemingly focused only on s 778 and thereby HMRC had shut out the possibility of s 779 being invoked. However, it is necessary to look at closure notices in their proper context and, in this case, the possibility of s 779 was kept alive in the documents that accompanied the closure notice.

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