Buy-out payment for healthcare benefits was fully taxable

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The First Tier Tribunal has held that a payment to a retired employee to buy-out his right to participate in his former

employer’s healthcare scheme did not qualify as either a payment for termination of employment (which would qualify for a £30,000 income tax exemption) or a capital gain. The payment was deemed to be a payment under an employer funded retirement benefit scheme and therefore was subject to income tax and national insurance contributions as employment income.

Mr Forsyth retired from Nestlé UK Limited in 1995. During his employment he had been entitled to participate in Nestlé’s healthcare scheme but this benefit ceased on retirement. Mr Forsyth subsequently discovered that several of his colleagues still retained this benefit on retirement from Nestlé. After some negotiation/discussion, Nestlé offered to buy-out Mr Forsyth from the scheme in exchange for a one off payment of £29,783, which was agreed by way of settlement agreement.

Nestlé made the payment to Mr Forsyth after deducting income tax. However, Mr Forsyth’s accountant considered that the sum of £29,783 paid to Mr Forsyth under the settlement agreement was either compensation for surrender of rights to medical care and should therefore be taxed as a capital gain or compensation for loss of office and tax free.

The Tribunal held that the payment should be classed as a relevant benefit under an employer-financed retirement benefits scheme, which is subject to income tax as employment income. As such, the payment was neither compensation for termination of employment under the Income Tax (Earnings and Pensions) Act nor a capital gain.

This case serves as a useful reminder that the Income Tax (Earnings and Pensions) Act is broad and that employers and employees should not just assume that the £30,000 tax exemption applicable to payments made in connection with termination will apply. If a payment is an emolument, a retirement benefit, a payment under a contract or for entering into a restrictive covenant, it will be subject to full income tax and national insurance.

Forsyth v The Commissioners for Her Majesty's Revenue & Customs [2014] UKFTT 915

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