

Case Name: Vermillion Holdings Limited v Her Majesty's Revenue and Customs

Case Ref No: XA44/20

Date of Hearing*: 5 May 2021

Division: First

Agents: Gilson Gray (Appellant); Office of the Advocate General (Respondents)

First Instance Decision: [2019] UKFTT 0230 (TC)

Second Instance Decision: [2020] UKUT 162 (TCC)

Case Description

In this appeal the appellant challenges the decision of the Upper Tribunal (Tax and Chancery Chamber) that the grant of an option for 1.5% of the issued equity share capital in the appellant company to Mr Noble, previously an equity funding adviser to the appellant, was made "by reason of his employment" (Income Tax (Earnings and Pensions) Act 2003, s 471) by the appellant as director and executive chairman, and so was chargeable to income tax. The UT reversed the decision of the First-tier Tribunal (Tax and Chancery Chamber), which had found that the option was not granted by reason of Mr Noble's appointment to those roles.

Mr Noble had been granted an option of 2.5% as payment for his services as an equity funding adviser. As part of a refinancing by the appellant company's investors, that option was cancelled, the 1.5% option granted and Mr Noble appointed as director and executive chairman of the company. The same had occurred in respect of the appellant company's legal advisers as payment for their services. Prior to the refinancing, the 2.5% option would have been worthless given the company's financial difficulties.

The issue is whether the grant of the 1.5% option was a condition for Mr Noble taking up his appointment.

*This is a virtual hearing. Further details are available on the Scottish Courts and Tribunals Service website.

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