

Rangers' EBT: why the Court of Session got it right

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Jolyon Maugham is two [stages into a three part series](#) on why he thinks that the Rangers Employee Benefit Trust case was wrongly decided by the Court of Session last week.

Jolyon's thesis appears to be threefold. The first is that trusts can be real things. The second is that the EBT in Ranger's case was real. Third, as a result the employee's of Rangers did not receive taxable income until such time as all the conditions attached to the arrangements made via the Ranger's EBT were released. I stress, I am summarising Jolyon's argument, which he has himself said he has simplified, so there is risk in such a caricature, but I think it fair.

I disagree with Jolyon's conclusions and think the Court of Session got this case right, and in the process correctly overturned decisions by the First and Upper Tax Tribunals. In the process I am, I stress, using the logic of common sense that the CS referred to in its decision and I am not referring to the detail of the ruling.

So, let me be clear. I am sure that what appeared to be valid trusts were created by the EBT arrangements. And I presume that they were properly managed. But that, in my opinion, is simply not the point. These trusts were not, as such shams: what they did was real. But the fact was that what they did had nothing to do with whether there was a charge to income tax, or not. As Jolyon has noted, what the CS has decided was that the very first payment made by Rangers, when money was initially transferred into the EBT, was the point where the tax liability on the Ranger's players was created. Jolyon does not agree with this, but I do. And the implication, with which I agree, was that the whole EBT structure can simply be ignored for tax purposes.

My reasoning is simple. The Rangers players and managers all agreed to work for the club. They did not do so with gratuitous intent. Nor did they do so with any expectation that the sums they would be rewarded with would be discretionary. Footballers negotiate, as I understand it, very tight contractual terms where even the conditions for bonuses are agreed long in advance. Side letters to the EBTs were, of course, intended to provide comfort to those partaking that their dues would be paid. And that was

because, in my opinion, the truth is that everyone working for Rangers knew three things.

The first was that they would be paid.

The second was they knew how much they would be paid.

And the third was that however the EBT was structured these obligations would be honoured.

Even if there was no hint in writing of these understandings I have no doubt at all that these very clear and deeply implicit understandings existed or not a single footballer would have played for Rangers; that's the way professional football is.

So, in that case the EBT's are real, interesting and even unusual arrangements around the management of the relationship between Rangers and their managers and players but they are not to be seen as any arrangement relating to the settlement of the tax due on reward owing to the players and management for the services they undertook: that obligation to pay tax arose the moment Rangers paid the EBT precisely because they knew that they had to make such payment to secure the services of the players and managers, even if that fact was unrecorded in writing in that form. I argue that from the moment that the payment to the trust was made the players and managers could quite reasonably predict the inevitable outcome that they would benefit as a result. Even if the trustees of the EBT might decide how those players might benefit this was only the consequence of, again, an implicit (and I would argue contractual) consent by the player to permit them to do this, that consent being granted as a part of the agreement to play for the club way before the first payment implicitly on their behalf was made to the EBT.

In that case the CS's argument that in effect the whole EBT arrangement can be set aside for tax purposes as a mere curiosity of the financial arrangements the club put in place to help their managers and players manage their personal affairs is right. The taxable event giving rise to the obligation to settle tax in the case of Rangers fulfilling its contractual obligation to its employees arose when it made the payment to the EBT because at that moment the consequence that the employee would have effective control of the funds was wholly predictable even if precisely how and when was subject to some discretionary management at what should have been the after tax level.

In that case all of Jolyon's discussion of trusts in this case is irrelevant in my opinion. Their tax consequence in this case was irrelevant except for the fact that it was claimed there was such consequence. Rangers were wrong to make that claim: it was untrue. Rangers had a contractual obligation to their employees that all parties knew existed. And as the CS said, in that case the common sense view must prevail that tax was due when the first payment that represented Rangers' settlement of this obligation arose, which is when payment was made by them to the EBT. And because this was due in

respect of what I think to be what was quite obviously an obligation to settle wages then PAYE had to apply at that time.

So, the real question is, what is the liability of those who thought up this arrangement and said that it would work to Rangers, its fans and Scottish football? And what penalties should apply to them? That's the really interesting question, because the social cost of their actions has been enormous and I think those who created them should be accountable for those consequences.