



**TC02463**

**Appeal number: TC/2012/01062**

*INCOME TAX – employment income - lump sum – whether a relevant  
benefit – ITEPA 2003 Part 6 Chapter 2*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**MR D V THOMAS**

**Appellant**

**- and -**

**THE COMMISSIONERS FOR HER MAJESTY'S      Respondents  
REVENUE & CUSTOMS**

**TRIBUNAL:    SIR STEPHEN OLIVER QC  
                  SONIA GABLE**

**Sitting in public in Ashford (Kent) in public on 30 November 2012**

**Brian Fairey, nominated agent, for the Appellant**

**Aidan Boal of HMRC for the Respondents**

## DECISION

1. Mr D V Thomas appeals against a closure notice and amendment of his self  
5 assessment for the year 2008/09. The tax charged is £12,000 which relates to a  
payment £37,200 (“the Payment”) made to him by his employer, Garrard & Co of  
Albemarle Street, London.

2. HMRC contend that the Payment was taxable under any of Sections 62, 393A-  
394 and 401-402 ITEPA 2003. Mr Thomas’s case is that the Payment was  
10 compensation for breach of his rights under his employment agreement. It was  
therefore outside the scope of Section 62. It was not caught by the employer –  
financed retirement benefits schemes provisions of Section 393A. Only the excess of  
£30,000 was chargeable by virtue Section 403(4).

3. Section 62 ITEPA 2003 provides, so far as is relevant that “*earnings*” in relation  
15 to an employment, means “*any salary, wages or fee*”.

4. Section 393A provides that “*Employer – financed retirement benefits scheme  
means a scheme for the provision of benefits consisting of or including relevant  
benefits to or in respect of employees or former employees of an employer*”. Section  
393B(1) provides that “*...relevant benefits means any lump sum, gratuity or other  
20 benefit provided (or to be provided) – (a) on or in anticipation of the retirement of an  
employee*” Section 394(1) provides that “*if a benefit to which this Chapter applies is  
received by an individual, the amount of the benefit counts as employment income of  
the individual for the relevant tax year*”.

5. Section 401 (1) provides that “*this Chapter applies to payments and other  
25 benefits which are received direct during consequence of, or otherwise in connection  
with...the termination of a person’s employment...* ”,

6. Mr Thomas attended the hearing and gave evidence.

7. He was born on 21 July 1942.

8. From June 1986 until 31 January 2009, Mr Thomas was employed by Garrard  
30 & Co. He had been recruited to take up the office of “Crown Jeweller” which was  
expected to be vacated on the retirement of an existing member of the staff of Garrard  
& Co. The retirement took place in 1991. Mr Thomas was duly appointed by the  
Queen in about 1991 and he held that office until his 65<sup>th</sup> birthday on 21 July 2007.  
He was a member of the Board of Directors of Garrard & Co. He worked full time  
35 for Garrard & Co but had no written service agreement. His salary had been  
determined when he was appointed Crown Jeweller and since then it had increased in  
line with other cost of living adjustments made by Garrard & Co for other members of  
its staff.

9. In later years the ownership of Garrard & Co had changed hands several times.  
40 Changes of ownership had led to changes of style and presentation. After Mr

Thomas's 65th birthday, the office of Crown Jeweller went to an individual who is not on the staff of Garrard & Co. Mr Thomas retained the role of Jeweller to HRH the Prince of Wales which he understood to continue until 2010. At the start of 2008, shortly after control of Garrard & Co had been acquired by a US shareholder, Mr Thomas discussed his engagement with the then Chief Executive Officer, a Mr Procop. The outcome of that discussion, Mr Thomas understood, was that he was to continue on the staff of Garrard & Co until July 2010 when the role as Jeweller to HRH the Prince of Wales was to come to an end. Mr Thomas then took a two to three month break. When he returned a new Chief Executive Officer had been appointed. A new style and a new regime were being brought into operation. Mr Thomas's office had, he found, been moved to the basement and his impression was that Garrard & Co were seeking to present a changed image to the public. That impression had been communicated to him by means of various other actions of the new management.

10. On 23 July 2008, Mr Thomas received the following letter from Garrard & Co signed by its then current Chief Executive Officer;

"In accordance with the Employment Equality (Age) Regulations 2006, I am writing to inform you that it is our intention to retire you from the business on 1 February 2009.

However, you have a legal right to apply to work beyond this time and I am writing to you to allow you to consider your options, which are:

- (1) To retire on your intended retirement date; or
- (2) To apply to continue working beyond your intended retirement date, either
  - (a) until a specified date,
  - (b) for specified period:
  - (c) indefinitely

I enclose an application form for you to complete to let me know which option you would like to take. If you indicate in your application form that you would like to continue working beyond your intended retirement date, you will be asked to attend a meeting to discuss this. As your employer, Garrard is obliged to consider your request but we may refuse it for any reason. It is Garrard's policy to look at each request on its merits and we will try to treat your request flexibly.

Please note that you have until 3 months before your intended retirement date to consider what you would like to do and to contact me. If you wish to continue working, but do not inform me before 1 November 2008, you will lose your right to apply to continue working beyond your intended retirement date and you will automatically retire on that date. There will be no further right of

5 appeal. If you retire on 1 February 2009 I would like to show our appreciation for your contribution to the company by making you a payment equivalent to six months base salary. This amount, which would be subject to income tax and any other appropriate employee deductions, would be paid to you in the February 2009 payroll. This payment will be conditional on your continued full time employment until 1 February 2009.”

11. Mr Thomas did not challenge Garrard & Co on any of the points arising in the Chief Executive Officer’s letter. Realising that he was not wanted, he duly “retired” on 1 February 2009 and received a “payment equivalent to 6 months base salary”.

10 12. If the Payment could properly be described as compensation for breach of Mr Thomas’s rights under his employment agreement with Garrard & Co, then it would not be salary under Section 62. It would not, arguably, be a “relevant benefit” within Section 393B (1). It would fall within Section 401 but only the excess over £30,000 would be taxed as benefit.

15 13. We return now to examine the letter of 23 July 2008. The letter is written in a way that expressly relates the Payment to Mr Thomas’s retirement on 1 February 2009. That is the effect of the words of concluding paragraph. The undertaking to pay is given in the context of Mr Thomas retiring on “your intended retirement date”. As we read the letter it is saying something like “on the date we intend to be your  
20 retirement date” i.e. 1 February 2009. In the events Mr Thomas did leave Garrard & Co’s employment on that date though, we note, he did not actively “retire”. We did not understand Mr Thomas to have challenged the terms of the 23 July 2008 letter. In particular, he did not apparently seek to rely on any agreement or undertaking that he had a contractual right to continue his employment until 2010. Nor, it appears did Mr  
25 Thomas attempt to invoke any rights that he might have had under the Employment Equality (Age) Regulations 2006. Our impression is that he decided to leave Garrard & Co with a minimum of fuss.

14. The only basis on which Mr Thomas might have had a right to continue his employment until 2010 was the understanding that he derived from his conversation  
30 with Mr Procop, the previous Chief Executive Officer. We do not doubt that there had been a conversation with Mr Procop and that had covered Mr Thomas’s future with Garrard & Co and possibly recognised Mr Thomas’s continuing tenure as HRH the Prince of Wales’ Jeweller. Mr Procop was not called to give evidence. We cannot however satisfy ourselves that Mr Procop, through that conversation, had committed  
35 Garrard & Co in contract to an employment agreement with Mr Thomas until 2010. At most, the conversation had given Mr Thomas an expectation of continued employment until then.

15. In terms of the statutory wording, we think that the Payment was a lump provided “on or in anticipation of the retirement of” Mr Thomas (within Section  
40 393(1)(a). On that basis it is wholly taxable for the year 2009. As it lies with Mr Thomas, as the Appellant, to prove to the contrary and he has not done so, we are bound to dismiss his Appeal.

16. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to “Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)” which accompanies and forms part of this decision notice.

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**SIR STEPHEN OLIVER QC  
TRIBUNAL JUDGE**

**RELEASE DATE: 2 January 2013**

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