

Annual payments (Lecture P1092 – 8.12 minutes)

In *Hargreaves Lansdown Asset Management Ltd v HMRC (2018)*, the First-Tier Tribunal decided that amounts paid by Hargreaves Lansdown (HL), an investment platform service provider, to its investor clients as 'loyalty bonuses' were not annual payments within S683 ITTOIA 2005. As a result, the Tribunal held that there was no requirement for HL to deduct basic rate income tax from such payments under S901 ITA 2007.

As mentioned above, HL operates a platform offering investment products from different fund providers directly to investors. In the past, such platforms were commonly financed by payments from the fund providers that represented rebates on the annual management charges paid by their retail clients. A result of this arrangement was that many platforms were able to market their services at no explicit cost to their clients.

However, in 2014, the Financial Conduct Authority (FCA) concluded that this type of fee structure created risks for investor protection and hindered transparency. The FCA therefore changed their rules by requiring platform service providers to charge clients a direct fee for their work, with the rebates being passed on in full to the investors.

HMRC argued that these sums represented a form of commission paid to the investors and were subject to withholding tax as annual payments. This view was set out in HMRC's Revenue & Customs Brief 04/13 which was published on 25 March 2013. HL challenged HMRC's interpretation.

In order to qualify as an annual payment for the purposes of S683 ITTOIA 2005, four requirements have to be met. The payment must:

1. be made under a legal obligation;
2. be capable of recurrence;
3. be income in the hands of the recipient; and
4. represent a 'pure income profit'.

The Tribunal agreed that three of the essential characteristics of an annual payment (ie. (1 to 3 above) were present in this case, but the judge did not accept that the payments represented a pure income profit in the hands of the investors. Instead, he considered that the payments were, in reality, a reduction of the investor's net cost, quite unlike the receipt of an annuity payment or interest in respect of which a recipient need do nothing but receive the money.

Contributed by Robert Jamieson