

Commissioners for His Majesty's Revenue and Customs (Appellant) v Vermilion Holdings Ltd (Respondent) (Scotland)

Case ID: 2022/0007

Case summary

Issue

Was the right or opportunity for Mr Noble to acquire the 2007 Option (a) available by reason of his directorship of VHL (section 471(1) ITEPA); or (b) made available by Mr Noble's employer (section 471(3) ITEPA), thereby subjecting it to income tax under Chapter 5, Part 7 of ITEPA?

Facts

In 2007, Vermilion Holdings Limited ("VHL") granted Quest Advantage Limited ("Quest"), a corporate advisory and accounting company owned by Mr Noble (of which he was a director), an option to acquire 1.5% of VHL's ordinary share capital (the "2007 Option"). Mr Noble was also appointed as a director of VHL from 16 March 2007, with a £4,167 monthly fee. The 2007 Option was novated to Mr Noble on 9 June 2016. Following a sale of VHL in November 2016, Mr Noble realised £636,238 from the exercise of the 2007 Option.

A dispute arose as to whether the gain was subject to income or capital gains tax. HMRC considered the 2007 Option an employment-related securities option under section 471 of the Income Tax (Earnings and Pensions) Act 2003 ("ITEPA"), making Mr Noble liable for £285,148.76 (income tax) and £100,709.98 (National Insurance), by decisions dated 17 August 2017.

VHL appealed against these decisions to the First-Tier Tribunal, which allowed VHL's appeal. By decision dated 27 May 2020, the Upper Tribunal allowed HMRC's appeal. The Inner House allowed VHL's appeal by decision dated 20 August 2021. HMRC now appeals to the Supreme Court.

Judgment appealed

[\[2021\] CSIH 45](#)

Parties

Appellant(s)

Commissioners for His Majesty's Revenue and Customs

Respondent(s)

Vermilion Holdings Ltd

Appeal

Justices

Lord Hodge, Lord Lloyd-Jones, Lord Leggatt, Lord Burrows, Lady Rose

Hearing start date

7 February 2023

Hearing finish date

7 February 2023

Watch hearing

7 February 2023 [Morning session](#) [Afternoon session](#)

Judgment details

Judgment date

25 October 2023

Neutral citation

[2023] UKSC 37