Tax agents & advisers

employees





FSM2502 - Offices: definition

The holder of an office is automatically chargeable under Schedule E/as employment income on the emoluments from it and generally there will also be liability for Class 1 NICs. It is not necessary to show, as for an employee, that an office holder works under a contract of service, And from 6 April 2003, Section 5 ITEPA 2003 applies the provisions of the employment income Parts of that Act equally to offices, unless otherwise indicated.

There is no statutory definition of the word 'office'. It has been judicially defined as a

'permanent, substantive position which had an existence independent from the person who filled it, which went on and was filled in succession by successive holders.'

[Rowlatt J in Great Western Railway Company v Bater 8TC231.]

That definition was approved in the more recent case of Edwards v Clinch 56TC367 with the proviso that a post need not be capable of permanent or prolonged existence but it must have an endurance at least beyond the tenure of one man. Buckley LJ stated

'An office in this context is, in my opinion, a post which can be recognised as existing, whether it be occupied for the time being or vacant, and which, if occupied, does not owe its existence in any way to the identity of the incumbent or his appointment to the post. It follows, I think, that the office must owe its existence to some constituent instrument, whether it be a charter, statute, declaration of trust, contract (other than a contract of personal service) or instrument of some other kind. It also follows, in my view, that the office must have a sufficient degree of continuity to admit of its being held by successive incumbents: it need not be capable of permanent or prolonged or indefinite existence, but it cannot be limited to the tenure of one man, for if it were so it would lack that independent existence which to my mind the word "office" imports. It may be that it should in some degree possess a public character, but it is not necessary to decide that point in this case, for the taxpayer's functions in respect of which fees were received undoubtedly had such a character.'

When the same case reached the House of Lords, Lord Wilberforce said

'For myself I would accept that a rigid requirement of permanence is no longer appropriate, nor is vouched by any decided case and continuity need not be regarded as an absolute qualification. But still, if any meaning is to be given to "office" in this legislation, as distinguished from "employment" or "profession" or "trade" or "vocation" It must denote a post to which a person can be appointed, which he can vacate and to which a successor can be appointed.'

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