Proskauer

Court of Appeal confirms genuine EBT loans not taxable as earnings (pre-disguised remuneration rules)

Tax Talks on **May 11, 2026**

The Court of Appeal has confirmed in *HMRC v M R Currell Ltd* that, prior to the introduction of the disguised remuneration rules, a genuine and repayable loan made via an employee benefit trust (EBT) is not taxable as employment income.

Although the decision relates to a pre-Part 7A regime, EBT arrangements continue to present complex and often contentious issues in practice - particularly in the context of historic planning and transactions. The case underlines the importance of careful, fact-specific analysis in this area.

Part 7A (the "disguised remuneration rules") was introduced to counter arrangements which seek to provide employees with rewards or benefits through third parties - such as EBTs - in a way that avoids income tax and NICs. Broadly, it imposes an income tax charge where funds or assets are made available to employees through such structures, even if not provided as salary. In a case such as *Currell*, where funds were routed through an EBT and made available by way of a loan, Part 7A would now typically impose a tax charge at that point.

Background

A company (MRCL) contributed £800,000 to an EBT, which then loaned the funds to its principal shareholder and director (MC). The loan was fully repayable, secured, and accepted to be genuine. MC used the funds for personal purposes, with the wider arrangement recycling funds back into the company.

HMRC argued that the arrangement was, in substance, remuneration and should be subject to PAYE and NICs. The Court of Appeal disagreed.

Court of Appeal decision

The Court emphasised that the reason a payment is made does not determine its tax treatment. The key question is whether the payment itself constitutes earnings.

A loan made to an employee by reason of their employment is not, in itself, taxable as remuneration where it is a genuine loan subject to a real and enforceable obligation to repay.

The Court also declined to extend the *Rangers* decision (which concerned payments made through employee benefit trusts) into a broader principle that any payment connected with employment is taxable.

On the facts, the loan was genuine, secured, and repayable. There was therefore no basis for treating it as earnings.

The Court noted that, although the arrangements enabled MC to access funds in a tax-efficient manner, this did not justify recharacterising the loan as employment income. It also observed that such arrangements would now likely fall within the disguised remuneration rules, and cautioned against applying the spirit of those rules to earlier periods.

Why this matters

- For historic arrangements, the decision confirms that genuine, enforceable EBT loans may fall outside PAYE and NICs.
- However, the outcome is highly fact-specific and will depend on whether there is a real repayment obligation with legal effect.
- For current structures, Part 7A will typically counter similar arrangements by imposing a tax charge when funds are made available through an EBT.
- Legacy EBT arrangements remain an area of HMRC focus and can give rise to complex issues, particularly in transactions and historic planning.

In short, *Currell* confirms that, before the introduction of Part 7A, a genuine loan could not be recharacterised as earnings simply because it was connected with employment or delivered a tax advantage. Given the continued complexity and HMRC focus in this area, businesses dealing with EBT arrangements - particularly in a transactional or historic context - should take advice on their specific position.