



**UPPER TRIBUNAL
(TAX AND CHANCERY CHAMBER)**

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| Applicant: Equity Advisory Limited & Craig Allan Mellor | Tribunal Ref: UT-2025-000030 |
| Respondents: The Commissioners for His Majesty's Revenue and Customs | |

APPLICATION FOR PERMISSION TO APPEAL

DECISION NOTICE

JUDGE VIMAL TILAKAPALA

1. Equity Advisory Limited and Craig Allan Mellor (the “Applicants”) apply to the Upper Tribunal (Tax and Chancery Chamber) (“UT”) for permission to appeal against the decision of the First-tier Tribunal (“FTT”) (Tribunal Judge Christopher McNall and Tribunal Member Susan Stott) released on 24 October 2024 (the “FTT Decision”) following a hearing which took place over the dates 22- 24 July 2024 and published as (1) Equity Advisory Limited & (2) Craig Allan Mellor v The Commissioners of HMRC [2024] UKFTT 953 (TC).

2. The FTT refused the Applicants’ permission to appeal. The Applicants then renewed their application to the UT. The Applicants appealed on four grounds (each of which were further particularised). On review of the papers, in a decision of 17 June 2025 that was issued to the parties on 18 June 2025, I granted the Applicants permission to appeal on all of the grounds sought other than two grounds (Ground 1(c) and Ground 2). The Applicants subsequently applied for an oral hearing to renew their application to appeal on those refused grounds. Prior to the hearing the Applicants decided not to pursue their appeal on Ground 2. This is my decision following the oral renewal of the application to appeal on the remaining refused ground (Ground 1(c)).

3. The Applicants were represented at the oral renewal by counsel Mr Michael Ripley and HMRC were represented by counsel Ms Joanna Vicary. I was grateful for both Mr Ripley's and Ms Vicary's submissions.

4. The FTT Decision concerned the Applicants' appeals against HMRC's determination of the tax liability of a payment (the "Payment") made by Equity Advisory Ltd ("EAL") to Mr Mellor.

5. In dismissing the Applicants' appeals, the FTT decided as follows:

(1) That the Payment was taxable as earnings from Mr Mellor's employment with EAL (FTT Decision [93] – [95])

(2) The FTT did not have jurisdiction to address whether HMRC can pursue both EAL and Mr Mellor nor to deal with any argument about a PAYE adjustment (FTT Decision [136]-[137])

(3) The Payment was an equity type return which should be treated as if made by EAL and paid to Mr Mellor in his capacity as a shareholder and so taxable as a distribution under s 1000(1)B CTA 2010 (FTT Decision [142]-[145])

(4) If the Payment was neither employment income nor a distribution it would have been miscellaneous income chargeable in Mr Mellor's hands under s 687 (1) ITTOIA 2005 [FTT Decision [147])

The Grounds of Appeal

6. The four grounds set out in the Applicants' application are as follows:

(1) Ground 1: The FTT erred in its approach to determining whether the Payment was "from" Mr Mellor's directorship with EAL. In particular:

(a) The FTT asked itself the wrong question and thereby failed to have regard to key factors in determining whether the Payment was "from" Mr Mellor's employment;

(b) The FTT erroneously focused on EAL's entitlement under the Consultancy Agreement rather than the reasons for which the Payment was made to Mr Mellor personally;

(c) The FTT wrongly decided that the Payment must be employment income in the absence of the identification of some other instrument or mechanism whereby Mr Mellor if not rewarded for his services was still seeking to vindicate his reward; and

(d) Insofar as the FTT's conclusion was founded on findings of fact the findings were contradictory, unsupported by the evidence or inadequately reasoned.

(2) Ground 2: The FTT erred in deciding the following matters which were not in dispute between the parties and on the Appellants had not provided any submissions:

(a) The application of ss 401- 406 ITEPA 2003; and

(b) The scope of the exemption from CGT under s 51(2) TCGA 1992.

(3) Ground 3: The FTT erred in determining that the whole of the Payment was a distribution. In particular:

- (a) The Payment was not “in respect of the shares in” any company;
- (b) The FTT failed to take into [account] factors relevant to determining whether the Payment was a distribution;
- (c) The Payment was not made “out of the assets” of EAL; and
- (d) Even if the Payment were a distribution, the amount of the distribution depended on its value as at 15 May 2017.

(4) Ground 4: The FTT erred in determining that if the Payment was not earnings from his employment and not a distribution it would nevertheless be taxable as miscellaneous income.

- (a) The FTT mischaracterised the Payment as income in Mr Mellor’s hands;
- (b) There was no analogous head of charge; and
- (c) The FTT did not identify the source of the Payment.

7. As mentioned above, this hearing considers Ground 1(c) only.

The Parties Arguments

8. Mr Ripley’s application hinges on finding in FTT decision [94] an additional or free standing reason for the FTT’s conclusion on the Payment representing employment income for Mr Mellor, that reason being the absence of another instrument or mechanism enabling him to claim reward for his services.

9. FTT Decision [94] states:

“We reject the submission that the Payment was not intended as a reward for Mr Mellor’s services. It is inconsistent with the substance of the matter, and, it seems to us, would also entail the identification of some other instrument or mechanism whereby Mr Mellor, if not rewarded for his services, was still seeking to vindicate his ‘reward’.”

10. Mr Ripley focused on the language of the paragraph, identifying in it two distinct propositions. The first was that to find the Payment as other than employment income would be “inconsistent with the substance of the matter”. The second was that finding the Payment to be other than employment income would require the identification of an alternative means by which Mr Mellor would have been compensated for his services.

11. He went on to argue that the second proposition – requiring identification of such an alternative means of reward – was incorrect as a matter of law, given that directors do not always require payment for the services they provide to their companies. He referred in support of this argument to *HMRC v Marlborough DP Ltd* [2024] UKUT 98 (TCC).

12. Ms Vicary argued that FTT Decision [94] simply followed on from the factual conclusion already reached by the FTT that the Payment was employment income, which conclusion had taken into account all of the relevant factors. She referred to FTT Decision paragraphs [87]-

[93] and also [95] which she said made it clear that the FTT had looked at all of the facts and reached its conclusion accordingly. FTT Decision [94] was, in her view, simply affirming the conclusion that had been so reached. It did not nor did it intend to set out the grounds (whether free standing or not) on which those conclusion had been reached.

13. Having considered Mr Ripley and Ms Vicary's submissions I consider that FTT Decision [94] does not contain a free-standing ground for the FTT Decision, that ground being the need for a document or instrument providing for Mr Mellor to be rewarded for his services to EAL, nor in my view does it seek to set out in whole or part the grounds on which the FTT Decision was reached.

14. FTT Decision [94] must be seen in the overall context of the FTT decision and the FTT's findings of fact.

15. When seen in that context it is apparent that the FTT's comments do not amount to either a general point of legal principle or an explanation of its reasoning but relate instead to its findings of fact as to the substance of the arrangements and the source of the payment made to Mr Mellor. I note in particular the following paragraphs of the FTT Decision:

"In our view and looked at in the round, the source of the Payment was Mr Mellor's employment with EAL. Payment to Mr Mellor:

- (1) was a payment "from" his employment with EAL for income purposes;
- (2) Was a remuneration or profit "derived from" an employment for NICs purposes" [88]

"As a matter of substance, we are entirely satisfied that the Payment as coming into the hands of Mr Mellor was Mr Mellor's remuneration for his services to EAL; or put differently as a reward to Mr Mellor for his services as a director of EAL [93]

16. Having concluded as a matter of fact that the Payment was in substance in respect of Mr Mellor's employment, my reading of the Decision is that the FTT then notes in FTT Decision [94] that if the Payment was not for those services then, in the circumstances, it would have expected there to be some other means by which Mr Mellor would have sought reward for those services.

17. In other words, having weighed up the information before it, the FTT's factual conclusion was (i) that Mr Mellor expected to be rewarded for his services to EAL and (ii) the Payment received was for those services. Consistently with this, the FTT then states in [94] that (i) as well as being consistent with the substance of the matter, (ii) there is no other instrument or mechanism in place under which he would be able to "claim his reward" for the services supplied. In my view, that is not the same as identifying the absence of such an instrument or mechanism as an additional or free-standing reason for concluding that the Payment was Employment Income, it is simply affirming the conclusion already reached. As Ms Vicary put it in her skeleton argument:

".. read in context, the sentence simply emphasises the veracity of the FTT's earlier stated conclusions that the Payment was remuneration for Mr Mellor's services to EAL...".

Conclusion

18. For the reasons set out above, I am not satisfied that Ground 1(c) discloses any arguable error of law. Permission to appeal on Ground 1(c) is therefore refused.

Signed:

Date: 19 September 2025

**Vimal Tilakapala
Judge of the Upper Tribunal**

Issued to the parties on: 24 September 2025