Tolley®CPD

April 2020

Disclaimer

CONTENTS

COVID-19

Guidance for individuals (Lecture P1187 – 8.52 minutes)

Statutory Sick Pay (SSP) entitlement

SSP is currently set at £94.25 per week but does not usually kick in until day 4 of sickness. Emergency legislation is being introduced, back dated to 13 March 2020, so there are no 'waiting days' for people affected by the virus. This means that employees are entitled to SSP from day one of self-isolation. This includes individuals who are caring for people in the same household and therefore have been advised to do a household quarantine.

Providing a sick note from the doctor is not a viable option and so employees who have the coronavirus or are advised to stay at home can get an 'isolation note' at:

https://111.nhs.uk/isolation-note/

Not eligible for SSP?

Individuals who are not eligible for SSP, because they are self-employed or earning below the Lower Earnings Limit of £118 per week can now more easily make a claim for Universal Credit or new style Employment and Support Allowance.

Where an individual has been advised to stay at home due the coronavirus, any New style Employment and Support Allowance is now payable from day 1 of sickness.

Coronavirus Job Retention Scheme

Employers may ask their employees to take unpaid leave during these troubled times. If the employee agrees then they will be reclassified as a furloughed worker. Employees are likely to agree to a period of unpaid leave as the alternative is often to get laid off permanently. In a period of furlough you are still technically employed so your employment rights will continue.

Ordinarily furloughed workers are not paid for their period of unpaid leave but under the Coronavirus Job Retention Scheme the government will cover up to 80% of their gross pay for three months, subject to a gross pay cap of £2,500. This three month period could well be extended depending on the impact of COVID-19.

So if an employee were earning £1,500 per month they could continue to earn £1,200 per month in the furlough period. This will be processed through the employers payroll and the employer will claim a grant from the government to cover the £1,200. The employer could continue to pay the employee the £1,500 and bear the extra £300 but that is their choice.

Further details on the Coronavirus Job Retention Scheme are contained within the Business Tax section of these notes.

What about the self-employed?

On 26 March 2020 the government announced that the self-employed can get 80% of their average profits paid to them as a grant. Their average profits are taken from 2016/17, 2017/18 and 2018/19 or less if they commenced trading in this period.

If the taxpayer has yet to submit their 2018/19 tax return then they must do so by 23 April 2020 to qualify for the grant.

Trading profits must be under £50k and represent more than half the taxpayer's income to qualify for the grant.

The grant is capped at £2,500 per month and will be paid direct into the taxpayer's bank account. HMRC have sent e-mails to taxpayers confirming their eligibility and will be back in touch when they have finalised the scheme.

Further details are expected but it became quite clear that these grants would undoubtedly mean higher taxes and national insurance in the future.

Claiming universal credit

From 6 April the Government are:

- increasing the Universal Credit standard allowance by £20pw (new + existing claimants);
- increasing the basic element in Working Tax Credit for 1 year by £20 pw (existing claimants);
- relaxing the minimum Income Floor for all Universal Credit claimants.

New claimants will not need to attend the jobcentre to demonstrate gainful self-employment.

From April, the Government are increasing Local Housing Allowance rates to the 30th percentile of market rents. This applies to all private renters who are new or existing Universal Credit housing element claimants and to existing Housing Benefit claimants.

https://www.gov.uk/government/publications/guidance-to-employers-and-businesses-about-covid-19/covid-19-guidance-for-employees

Support for businesses (Lectures B1188/1189 – 10.30/ 11.58 minutes)

Coronavirus Job Retention Scheme

The government want to encourage employers to retain staff. This scheme will enable all UK employers to access support for furloughed workers. Furloughed workers are employees who remain employed but are on temporary unpaid leave, either because the employer has been forced to close their business by the government or because the business continues to trade but with a reduced number of staff. The government hope this scheme will reduce the number of staff that are laid off in these unprecedented times. It is important to appreciate

that the scheme only applies to furloughed employees and not to those working reduced hours.

The scheme will apply to all employers, small or large, charitable or non-profit.

The scheme can include any employees who were in employment on 28th February 2020 and will run initially for a period of 3 months. It can run from 1 March 2020 but most are applying it from the end of March as the scheme has only recently been announced.

Under the scheme, employers pay their employees and then apply to HMRC for a grant to reimburse 80% of 'furloughed workers' regular salary, up to a cap of £2,500 per month. The grant will also cover the employers national insurance and the 3% auto-enrolment contribution.

Example

Consider an employee earning £2,000 per month who agrees to a furlough period of three months. This would normally be unpaid and would obviously need the employee's agreement. Under the Job Retention Scheme, the government would cover £1,600 of the £2,000 contracted gross pay. The employer then puts £1,600 gross pay through their payroll and pays the resulting net pay to the employee. The grant will also cover employers national insurance and 3% pension contribution on the £1,600.

There does not appear to be any requirement for the employer to pay the £400 difference between normal gross pay and the '80% grant' received from HMRC but they can choose to do so at their own cost. The scheme is most likely to apply when businesses are temporarily closed so it seems unlikely that many employers will be able to cover the full gross pay.

Where an employee earns say £4,000 per month, how does the cap work?

The guidance indicates that 80% of earnings, £3,200 (4,000 x 80%), is eligible for relief but capped at the maximum of £2,500. The grant will also cover employers national insurance and 3% pension contribution on the £2,500. If the employer chooses to keep the pay at £4,000 per month the additional costs are the employers responsibility.

Employers will need to identify their 'furloughed' employees,' and notify these employees of the change in their employment status. Changing employee status in this way is subject to existing employment law and, depending on the employment contract, may be subject to negotiation.

For each furloughed worker, employers will need to submit relevant details to HMRC through a new online portal. As current systems are not designed to make payments to employers, HMRC are working urgently to set up a system for reimbursement, hopefully by the end of April 2020. It is via this new portal that the government will process the employer grants.

Recent government guidance has confirmed that workers with irregular hours and those on zero hour contracts will also be covered under the scheme based on their average earnings.

What about Directors? Can they be furloughed as part of the job retention scheme? At present it is not entirely clear but one would think they would in the right situation.

Unfortunately most owner managers restrict the directors salary's to the personal allowance and this is what the grant is based on. Dividends do not come into the equation.

The problem directors have with the scheme is that they must not work at all during the furlough period. This could work with a sales director or maybe one of the spouses where one continues to work as the company deals with reduced activity.

VAT deferral

The VAT falling due in the period 20 March 2020 to 30 June 2020 can be deferred. There is no need to apply for this deferral as it will automatically apply. The taxpayer would need to cancel their direct debit and then reinstate it for the next quarter though.

Businesses will be given until 31 March 2021 to pay any liabilities that have accumulated during the deferral period. VAT returns still need to be filed on time and HMRC will continue to process VAT refunds and reclaims as normal.

Income Tax

The income tax payments on account that are due on the 31 July 2020 will be automatically deferred until the 31 January 2021 and no penalties or interest for late payment will be charged in the deferral period.

Time to Pay service

All businesses and self-employed people in financial distress, and with outstanding tax liabilities, may be eligible to receive support with their tax affairs through HMRC's Time To Pay service.

These arrangements will be agreed on a case-by-case basis and tailored to individual circumstances and liabilities. It will be important for taxpayers who have missed a tax payment or are likely to might miss their next payment due to COVID-19 to call HMRC's helpline on 0800 024 1222.

Paying Statutory Sick Pay (SSP)

Amended legislation will allow UK based SME businesses employing fewer than 250 employees (as at 28 February 2020) to reclaim SSP paid for absence due to the virus.

The refund will cover up to 2 weeks' SSP per eligible employee who has been off work because of COVID-19.

Employers should maintain records of absences and SSP payments. If an employer requires a Covid-19 medical note, an isolation note can be obtained online at *https://111.nhs.uk/isolation-note/.*

The government is working to set up the repayment mechanism for employers as soon as possible.

Coronavirus Business Interruption Loan Scheme

A new temporary Coronavirus Business Interruption Loan Scheme, delivered by the British Business Bank, was launched to support primarily small and medium-sized businesses to access bank lending and overdrafts.

Under the scheme, the government will provide lenders with a guarantee of 80% on each loan (subject to a per-lender cap on claims) to give lenders further confidence in continuing to provide finance to SMEs. The government will not charge businesses or banks for this guarantee, and the Scheme will support loans of up to £5 million in value.

The full rules of the Scheme and the list of accredited lenders is available on the British Business Bank website. All the major banks will offer the Scheme once it has launched.

Businesses with an existing loan with monthly repayments may want to ask for a repayment holiday to help with cash flow.

COVID-19 Corporate Financing Facility

The Bank of England will buy short term debt from larger companies to support companies affected by a short-term funding squeeze, and allow them to finance short-term liabilities.

It will also support corporate finance markets overall and ease the supply of credit to all firms.

More information is available from the at:

https://www.bankofengland.co.uk/markets/market-notices/2020/ccff-market-notice-march-2020

Support for retail, hospitality and leisure businesses

Business rates holiday: The Government is introducing a business rates holiday for retail, hospitality and leisure businesses in England for the 2020/21 tax year.

The holiday will apply to properties that are wholly or mainly being used:

- as shops, restaurants, cafes, drinking establishments, cinemas and live music venues
- for assembly and leisure
- as hotels, guest & boarding premises and self-catering accommodation

This should happen automatically although local authorities may have to reissue bills to exclude the business rate charge.

The Retail and Hospitality Grant Scheme: This provides English businesses in the retail, hospitality and leisure sectors with a cash grant per property:

- Rateable value up to £15,000 — Grant of £10,000
- Rateable value between £15,001 and £51,000 — Grant of £25,000

The same properties that are eligible for the business rates holiday will be eligible for this grant.

Local authorities should contact the relevant businesses directly.

Any enquiries on eligibility for, or provision of, the reliefs and grants should be directed to the relevant local authority.

Support for nursery businesses

Nursery businesses will receive a business rates holiday for the 2020/21 tax year, provided they are in England and the properties are:

- occupied by providers on Ofsted's Early Years Register;
- wholly or mainly used for the provision of the Early Years Foundation Stage.

Additional Small Business Grant Scheme funding

The government is providing additional Small Business Grant Scheme funding in England for local authorities to support small businesses that already pay little or no business rates because of:

- small business rate relief (SBBR);
- rural rate relief (RRR);
- tapered relief.

This will provide a one-off grant of £10,000 to eligible businesses to help meet their ongoing business costs. Local authorities will contact businesses directly. Any enquiries on eligibility for, or provision of, the reliefs and grants should be directed to the relevant local authority.

Insurance

Businesses are encouraged to check the terms and conditions of their specific policy and contact their providers.

Most businesses are unlikely to be covered, as standard business interruption insurance policies are dependent on damage to property and will exclude pandemics.

Businesses that have cover for both pandemics and government-ordered closure should be covered, as the government and insurance industry confirmed on 17 March 2020 that advice to avoid pubs, theatres etc is sufficient to make a claim as long as all other terms and conditions are met.

https://www.gov.uk/government/publications/guidance-to-employers-and-businesses-about-covid-19/covid-19-support-for-businesses

Budget 2020

Personal tax issues (Lecture P1186 – 12.25 minutes)

Tax rates and allowances

There was no change to personal allowance as expected so it stays at £12,500. The married couples' allowance where available increases to £9,075 (from £8,915). The income limit before tapering increases to £30,200 (from £29,600) and the minimum entitlement increases to £3,510 (from £3,450).

Blind person's allowance is indexed to £2,500 for 2020/21 (from £2,450 in 2019/20).

There are no changes to tax bandings, nor personal tax rates in England, Wales and Northern Ireland.

Junior ISAs and Child Tax Funds (CTFs)

The investment limit for JISAs and CTFs increased from £4,368 to £9,000 for 2020/21.

The main ISA subscription limit remains at £20,000 for 2020/21 and has not increased for 4 years.

Employees working from home

From April 2020 the maximum flat rate income tax deduction to cover additional household expenses increases from £4 to £6 per week where working at home under homeworking arrangements, i.e. where the employee is required to work at home by the employer.

Larger amounts can be claimed but only if evidenced by invoices or proof of costs incurred.

Car and van benefits

Car benefits are reduced by 2% in 2021/22 for cars registered from 6 April 2020. Electric cars secure the same 2% reduction even when registered before 6 April 2020.

Consequently, there are different benefits for hybrids, petrol or diesel cars depending on whether the car was registered before or after 5 April 2020.

Rates will rise by 1 percentage point in 2022/23 and by a further 1 percentage point in 2023/24 for electric cars and other cars registered from 6 April 2020. They will then be frozen until 2024/25.

The fuel benefit multiplier and van benefit increased by CPI of 1.7%

- The fuel multiplier £24,500 (2020/21: £24,100)
- Van benefit is £3,490 (2019/20: £3,430)
- Van fuel benefit £666 (2019/20: £655)

Zero-emission vans will have a benefit of £2,792 in 2020/21 (2019/20: £2,058). The benefit will be zero in 2021/22.

Top-slicing relief

HMRC lost a case about interaction of personal allowances and income (life-insurance policy gains) eligible for TSR, having claimed that the entire gain was added to income in the year the policy was encashed in determining if the personal allowance is abated.

FB 2020 will legislate for how allowances and reliefs get set against such gains and will apply to life insurance policy gains from 11 March 2020.

This confirms that when assessing if any personal allowance is tapered, we take other income plus the annual equivalent life-insurance policy gain (not the whole gain).

Allowances and reliefs must be offset against all other income before reducing the policy gain.

Pensions

Annual Allowance tapering from 2020/21

The annual allowance and money purchase annual allowance remain unchanged at £40,000 and £4,000 respectively

The threshold income limit (excludes employer's pension inputs) increases from £110,000 to £200,000 from 6 April 2020. The adjusted income limit also increases from £150,000 to £240,000. Tapering will however reduce the annual allowance down to a minimum of £4,000 (from £10,000). This will impact taxpayers with adjusted income of more than £300,000.

Lifetime allowance limit

The lifetime allowance increased by CPI from 6 April 2020 from £1,055,000 million to £1,073,100.

Pension contributions will continue to save tax at taxpayer's marginal rate.

Disguised remuneration and the loan charge review

The Government has confirmed its response to Sir Amyas Morse's Independent Loan Charge Review. The recommendations will be legislated for in Finance Bill 2020.

NIC thresholds

The NIC Class 1 primary threshold (but not the secondary threshold for employer NICs) is increased to £183 per week, equivalent to £9,500 per year.

The Class 4 lower profits limit is similarly increased to £9,500.

There is no change to the Class 1 upper limit or Class 4 upper profits limit.

Covid-19 sick pay

SSP will be payable from day 1 for employees with the virus and those advised to self-isolate (and their carers).

There will be support for those unable to claim SSP (i.e. those paid below the NIC lower earnings limit and the self-employed) through ESA and Universal Credit.

The 'new style' ESA will be payable for people directly affected by COVID-19 or self-isolating according to government advice from day 1 of sickness, rather than day 8.

Sufferers can claim universal credit and access advance payments where directly affected by COVID-19 (or self-isolating), without the current requirement to attend a jobcentre.

For the duration of the outbreak, the minimum income floor in the universal credit rules will be temporarily relaxed for those directly affected by COVID-19 or self-isolating (to ensure the self-employed are compensated for loss of income).

Scottish social security benefits

Legislation will be introduced to exempt from income tax three social security benefits, (Scottish Child Payment, Job Start, and Disability Assistance for Children and Young People) introduced by the Scottish government.

Capital Gains Tax rates and allowances

The annual exemption will be £12,300 for 2020/21 (2019/20: £12,000).

The rates of CGT are unchanged remaining at

- 10%/20% on most assets (basic rate/higher rate)
- 18%/28% on residential property gains

Entrepreneurs' Relief

The lifetime gains limit is reduced from £10 million to £1 million for disposals on or after 11 March 2020.

Rules will also be introduced that apply to forestalling arrangements entered into before Budget day.

In such cases the disposal will be subject to the £1,000,000 lifetime cap unless:

The parties to the contract demonstrate that they did not enter into the contract with a purpose of obtaining a tax advantage by reason of the timing rule in s.28 TCGA 1992, and

Where the parties to the contract are connected, that the contract was entered into for wholly commercial reasons.

In addition, where shares have been exchanged for those in another company on or after 6 April 2019 but before 11 March 2020, and

- both companies are owned or controlled by substantially the same persons, or
- persons who held shares in company A hold a greater percentage of shares in company B than they did in company A and, on 11 March 2020, the personal company test, the trading company and the employee/officer test are met in respect of company B,

Then if an election is made under section 169Q TCGA 1992 on or after 11 March 2020 to treat the exchange as a disposal for CGT purposes, the share disposal is to be treated as taking place at the time of the election for ER purposes, meaning that the new lifetime limit of £1,000,000 will apply.

Inheritance tax rates and thresholds

Inheritance tax thresholds and rates are unchanged, except that (as already planned) the residence nil rate band increases from £150,000 to £175,000 for 2020/21.

Business Tax issues (Lecture B1186 – 13.32 minutes)

Employers and Covid-19

The Government will be providing support for businesses with less than 250 employees as at 28 February 2020, in the form of a refund of Covid-19 related SSP costs.

The refund will cover a maximum of 2 weeks per employee.

The employer must maintain record of staff absences but a GP fit note will not be required (evidence of NHS 111 advice will be sufficient).

The support will start when regulations for SSP for self-isolators come into force.

There is no system that can repay employers for SSP at the moment but the Government is working on a solution to this.

There will be a 100% business rates discount for 2020-21 for small businesses (including leisure/hospitality sectors) to cater for the loss of business caused by the virus.

If a business is eligible for small business rate relief, they would not be paying rates anyway. For these businesses, £3,000 per business can be claimed from local Government to eligible businesses to meet ongoing costs.

A special Covid-19 helpline is being set up to make time-to-pay arrangements for tax liabilities.

There will be no late payment penalties or interest if a business faces administrative difficulties contacting HMRC or paying tax because of the virus.

Structures and Building Allowance

The rate of Structures and Buildings Allowance is increased to 3% p.a. from 1 April 2020 for companies and 6 April 2020 for unincorporated businesses.

Businesses with accounting periods straddling these dates will need to time apportion the allowance accordingly.

Changes to allowances for cars from April 2021

A 100% FYA will only apply to the purchase of a new zero-emission car from April 2021.

A car with emissions of up between 1 and 50g/km will qualify for 18% general pool writing down allowances and all other cars will only qualify for the 6% special-rate pool writing down allowances.

Other capital allowance changes

The 100% FYA for zero-emission goods vehicles and natural gas and hydrogen refuelling equipment is extended until April 2025.

The 100% FYA on plant and machinery expenditure in Enterprise Zones is extended to 31 March 2021 (it was due to expire on 31 March 2020).

Car leases

There is a 15% disallowance of certain car lease expenses in the profit and loss account.

This will apply to cars with CO2 emissions of more than 50g/km for leases entered into from 1 April 2021. The disallowance currently applies to cars with emissions of more than 110g/km.

Annual investment allowance

The Budget press releases confirm that the AIA will fall back from £1 million to £200,000 for expenditure incurred from 1 January 2021.

There are transitional rules that are particularly harsh when the AIA limit decreases.

Businesses therefore need to plan their capital expenditure carefully around end of the calendar year, or they could delay the availability of allowances significantly.

Off-payroll working in private sector

The new rules for non-small customers utilising the personal services of workers operating through personal service companies were due to commence on 6 April 2020.

Since the Budget, chief secretary to the Treasury, has said that the government's IR35 tax reforms will be postponed for a year, being introduced in April 2021.

Construction Industry Scheme (CIS) abuse

Legislation will be introduced in a later Finance Bill to prevent non-compliant businesses from using the CIS to claim tax refunds to which they are not entitled. The measure will allow HMRC to reduce or deny the CIS credit claimed on employer returns where the sub-contractor cannot evidence the deductions and does not correct their return when asked.

Rate of corporation tax

As expected, corporation tax will remain at 19% from April 2020.

R&D expenditure credit

This relief mainly impacts on large companies but can also apply to certain costs incurred by small companies that are not eligible for SME enhancement.

The tax credit is increased from 12% to 13% for expenditure incurred from 1 April 2020.

There will be a consultation on widening the scope of the tax credit to include data and cloud computing.

R&D for small companies

The planned introduction of the cap on the payable tax credit in the SME R&D schemes will be delayed until 1 April 2021. Repayable tax credits were going to be capped at 3 x the PAYE liability for the accounting period.

The Government wants more time to think about circumstances where the cap would not apply.

Corporate capital losses

From 1 April 2020, there is a restriction on the proportion of annual chargeable gains that can be relieved by brought-forward capital losses.

The £5 million loss allowance (group-wide) that has been claimable since 2017 can be used by capital or income losses each year at company's behest.

Certain companies in liquidation will be excluded from the new restriction.

Non-resident companies with UK property businesses

Finance Act 2019 brings non-resident companies within scope of UK corporation tax from 6 April 2020 if they derive income from UK property.

FB2020 makes some amendments to the law.

Financing costs related to UK property incurred before a non-resident company starts carrying on a UK property business will be brought into account in the first period (if incurred within last 7 years).

The exception from notifying chargeability to corporation tax where all income suffers tax at source becomes conditional on that tax covering the company's liability.

Corporate Intangible Fixed Assets

Intangible assets created before 1 April 2002 have traditionally been treated as capital assets for corporation tax purposes unless purchased from an unrelated party since then.

FB 2020 will amend the law to allow companies that acquire pre-April 2002 intangibles from related parties from 1 July 2020 to claim tax relief under the Intangible Fixed Asset regime, amortisation/ impairment becoming an allowable expense (or alternatively claimed as a 4% straight-line allowance).

There is an anti-avoidance rule for purchases from a non-corporate related party. Any excess of the purchase price over market value will be treated as a capital asset. Only the market value will qualify for deduction as an intangible asset.

Other taxes (Lecture B1187 – 16.13 minutes)

Employment allowance

The allowance will increase to £4,000 p.a. from April 2020. This is now only available if secondary class 1 contributions in the previous year were less than £100,000. The £100,000 limit will apply across connected employers so none of the connected employers will be able to claim the allowance where total secondary contributions are £100,000 or more. If the secondary contributions are less than £100,000 then the connected employers can choose which one of them will claim the allowance.

Employing armed forces veterans

From April 2021, no employers' national insurance will be charged on earnings up to the upper earnings limit (currently £50,000) for employers of armed services veterans in first year of civilian employment.

Extended neonatal leave

The Government is planning a new entitlement to neonatal leave and pay for employees whose babies spend an extended period in neonatal care. No details are available yet.

Digital services tax

The Government will impose a 2% tax on the revenues of certain (very large) digital businesses from 1 April 2020. This will apply if the business has global revenue exceeding £500 million and UK revenue exceeding £25 million, and will not be payable on the first £25 million of UK revenue. Businesses will pay the DST on an annual basis, consistent with draft legislation published in July 2019.

The Government will repeal DST once an appropriate global solution is in place for taxing digital services in country of consumption not supply.

Red diesel

A broad removal of the entitlement to use red diesel and rebated biofuels was announced. The removal will not take effect until April 2022 and the relevant legislation is expected to be introduced by a future Finance Bill. Exceptions are to be made for the agriculture and rail sectors as well as for use in non-commercial heating. A consultation will take place later this year which will present other sectors with the opportunity to put forward a case for their continued entitlement to use red diesel and rebated biofuels.

Plastic Packaging Tax

The Government confirmed the introduction of a plastic packaging tax. The idea was posited in Budget 2018 and a consultation took place in 2019. Now paving legislation will be introduced in Finance Bill 2020 and a further consultation on the detailed policy design has been launched. The consultation closes on 20 May 2020.

Tax avoidance

General measures

HMRC is to publish a new strategy to deal with promoters of avoidance schemes. This will be aimed at disrupting the supply chain by making it harder for firms to promote schemes as well as making it clearer to potential users that HMRC will challenge these sorts of arrangements.

Following the review of the loan charge by Sir Amyas Morse the Government announced that it would introduce further measures to tackle marketed tax avoidance. No details of what is intended have been announced but it has been confirmed that draft legislation will be published in July 2020.

Notification of difference of view

From April 2021 large businesses will be required to notify HMRC when they take a tax position that HMRC is likely to challenge.

The concept will draw on international accounting standards which many large businesses already follow.

There will be a consultation soon on the detail.

Tax conditionality

From 2022 firms in the private hire and scrap metal businesses will only be able to obtain or renew a licence to operate if they can show that they are properly registered for tax. The Government will consult on whether or not it can be used more widely for all Government awards and authorisations. The rules will apply only in England and Wales but HMRC will work with the devolved administrations to extend the principle across the whole of the UK.

Raising the standards

HMRC will call for evidence as part of a project to raise the standards of tax advice. At the moment taxation is not a regulated profession in the UK with standards set by the professional bodies. There is no sign that HMRC wishes to move to become a regulator of tax advisers, but it clearly wants to have a closer involvement in the way that standards are set and monitored.

Limited liability partnership (LLP) returns

Legislation will be introduced with retrospective effect to ensure that where an LLP operates 'without a view to profit', HMRC can nevertheless amend the LLP members' returns. The vast majority of LLPs operate with a view to profit, and these will not experience any change at all.

HMRC debts in an insolvency

PAYE collected from employees, CIS deductions and VAT collected from customers will be preferential debts for HMRC to recover from 1 December 2020.

Other tax liabilities will remain unsecured and rank with other unsecured creditors equally.

Automated notices and penalties

The Government will legislate to confirm that HMRC may use automated processes to Issue taxpayers with notices to file tax returns and to issue penalty notices.

This will apply prospectively and retrospectively and is in response to cases that HMRC has lost at Tax Tribunals where judges have held that the requirement that a notice or penalty be determined by an Officer of the Board of HMRC meant that automatic notices and penalties were not valid.

Registration/de-registration limits

There are no changes to the VAT registration and de-registration limits, which remain at £85,000 and £83,000 respectively.

Zero-rating

Digital publications will be zero-rated from 1 December 2020. This will cover e-books, e-newspapers, e-magazines and academic e-journals.

Women's sanitary products will also be zero-rated, this time from 1 January 2021.

VAT on imports

Postponed VAT accounting will apply on imports of goods after Brexit.

Import VAT will be accounted for on the VAT return for period in which date of importation occurs, showing output VAT owed to HMRC and the potential recovery of this VAT as input VAT in Box 4.

At present, VAT on imports must be paid over to HMRC first, then recovered later.

New rules on 'call off' stock

Call off stock is stock held in another EU country for a single customer.

Previously, the company would have to have registered in the customer's country and charge local VAT to the customer when the stock was called-off.

The only exception to this was where the customer agreed to treat the movement of stock into their country as an acquisition by them, whereby they accounted for the VAT to their local tax authority. In this case, the UK supplier could use the foreign customer's VAT number to zero-rate the movement of goods.

The new rules apply from 1 January 2020.

An intra-community supply only takes place when the customer takes the stock (this means that an EC Sales List report will now be needed). There is therefore no need to register in other country, nor use the customer's VAT number.

If stock is not called off within 12 months of arrival, the supplier must register in the customer's country and treat the subsequent supply to the customer as a domestic supply in that country.

Agricultural flat rate scheme

There are new conditions for entry and exit into the AFRS from 1 January 2021 (aligning the criteria with the VAT Flat Rate Scheme).

A business can join the AFRS when their annual turnover for farming related activities is below £150,000.

They must notify HMRC once annual turnover for farming related activities exceeds £230,000, to be deregistered from the scheme and register for full VAT instead.

If turnover exceeds £85,000 for non-farming related activities, the business will still be required to register for VAT and will be ineligible for the AFRS.

Domestic reverse charge – construction services

The Budget confirms that the rules postponed from 1 October 2019 will go ahead from 1 October 2020. It will apply to CIS-type construction services from a VAT registered supplier (sub-contractor) to a VAT registered customer (contractor), where the customer will recharge the service to an end user.

Where reverse charging applies, the supplier does not charge VAT. Instead, the customer charges itself VAT at the appropriate rate (5% or 20%). It declares output VAT in Box 1 of return and recovers it as appropriate as input VAT in Box 4.

The net value is put in Box 6 of the subcontractor's VAT return whilst the main-contractor will put the net amount in their Box 7.

SDLT changes

There will be a 2% SDLT surcharge on non-UK residents purchasing residential property in England and Northern Ireland from 1 April 2021.

Qualifying housing co-operatives will be relieved from ATED and the 15% flat rate of SDLT on purchases of dwellings over £500,000. SDLT relief in England and Northern Ireland will take effect from 11 March 2020. UK-wide ATED relief from 1 April 2021 with a refund available for 2020/21.

ATED rates

ATED rates will be increased from April 2020 by 1.7% (CPI increase to September 2019).

Budget 2020 notes prepared in collaboration with Malcolm Greenbaum

Personal tax

IR35: Eamon Holmes loses

Summary – With sufficient mutuality of obligation and control, had he been engaged directly, the hypothetical contract between Eamon Holmes and ITV would have been one of employment. IR35 rules applied.

Red, White and Green Limited was incorporated in April 2001 with Eamon Holmes as the sole director and majority shareholder; his children own the remaining shares.

The company was the personal services company used as the vehicle through which his services were provided to ITV as presenter on its show 'This Morning' under a series of contracts between the parties. HMRC challenged the four contracts relating to 2011/12 to 2014/15 under the IR35 legislation.

Under the contracts, Holmes was obliged to provide his services and could not send a substitute. ITV was obliged to pay for his services, even if the show was cancelled.

He had considerable freedom over how he presented on the 'This Morning' show but ITV decided who would be interviewed, ITV staff researched each interview providing him with a detailed brief from which to carry out his work. ITV had the ultimate editorial rights relating to the programme, with Holmes being bound by OFCOM guidelines. Although Eamon Holmes also worked for Sky as a presenter and generated other income from radio and media contracts, he was not allowed to undertake other work that might conflict with his ITV contracts.

Red, White and Green Limited was entitled to receive certain additional benefits for Eamon Holmes, including a car for him to travel to and from the studio, a selection of clothing for his appearances on the programme, the reimbursement of reasonable travel and accommodation expenses, and any other expenses directly incurred in connection with the services on presentation of receipts and subject to prior approval by ITV.

Decision

The First Tier Tribunal concluded that with ITV having a significant element of control over his work, together with the mutuality of obligation described above, Eamon Holmes was caught by the IR35 rules for all years in question. His personal service company should have been accounting for PAYE and NIC on the services provided.

Red, White and Green Limited v HMRC (TC07603)

Transfer was an unauthorised Payment

Summary – Transfer of funds from one SIPP to another was a payment and was held to be an unauthorised payment.

Mr Clark was a retired businessman who set up two self-invested pension schemes (SIPPs). He decided to transfer the funds held in one of the plans because he was unhappy with the investment returns. Acting on professional financial advice, he implemented the transfers in a series of steps.

HMRC said the transfers were unauthorised payments (FA 2004, s 208 and 209) and raised a discovery assessment.

The First Tier Tribunal and Upper Tribunal dismissed the taxpayer's appeal.

Decision

Lord Justice Henderson in the Court of Appeal dealt first with whether the transfer of funds was a payment. The judge concluded it was. The money was intended to pass from one pension scheme to another — legal title passed from one to the other. From a 'practical and common-sense perspective', it was not relevant that it later transpired the transfer was defective. Further, it seemed 'implausible' that parliament would have intended to exclude a transfer of bare legal title to an asset from the scope of an unauthorised member payment.

On the validity of the discovery assessment, it transpired that although this had related to the second transfer, it was the first transfer that was the relevant one. However, the tax due was the same and the judge said the assessment should stand. The covering letter from HMRC stated that the assessment was based on the second transfer, but that the assessment was being made to protect HMRC's position. On a 'fair reading' of the letter, it was clear HMRC was still investigating the transactions, including both transfers.

The judge said: 'If HMRC were not yet in possession of the full facts relating to the bizarre series of transactions …this was a misfortune for which Mr Clark ultimately has nobody to blame but himself.'

The taxpayer's appeal was dismissed.

G Clark v CRC, Court of Appeal, 21 February 2020

Adapted from the case summary in Taxation (19 March 2020)

Capital Taxes

Taxpayer denied main residence relief (Lecture P1189 – 17.24 minutes)

This article deals with the recent CGT case of Simpson v HMRC (2019) which was decided by the First-Tier Tribunal.

The taxpayer (S) bought a one-bedroom flat in Earl's Court Square, London SW5 for £630,000 in June 2013. She sold the property towards the end of November 2013 for £900,000, having undertaken significant work in refitting and improving the flat's kitchen and reception room.

During this period, S also owned a nearby (and larger) apartment in Coleherne Court, Old Brompton Road, London SW5 that she had purchased in December 2001 following her divorce. A few years later, S's widowed sister (Mrs O'Donnell) had moved in with her. There was then the possibility of S's daughter (Victoria) and her new husband, who were living in France, returning to London and joining Victoria's mother in Coleherne Court. Realising that it might be a little awkward for them all to be living together, S looked around for a smaller flat for herself and her boyfriend – hence the purchase of the Earl's Court Square property referred to above.

Following the flat's sale in 2013/14, S did not notify HMRC of the disposal in her next tax return on the ground that she had lived in the property as her main residence and so was exempt from CGT. She argued that, after buying the flat, she had furnished it, moved in and occupied it throughout the refurbishment work. As a result, there was no tax to pay, despite the fact that she already owned another residential property.

It is well known that, where a taxpayer has two or more residences, it is open to the individual to make a nomination to HMRC that one or other of the properties is to be regarded as their main residence, but there is no statutory requirement in S222(5) TCGA 1992 that this has to be done. If a timely nomination for main residence status is not made, the ball falls into HMRC's court and they will come to a decision based on the underlying facts. This was to be the position here.

HMRC's primary contention was that S was not entitled to claim any main residence relief because she had never occupied Earl's Court Square as a residence. In the alternative, HMRC maintained that, if she did occupy it as a residence, the property was not her main residence.

In the non-tax case of Fox v Stirk (1970) heard by the Court of Appeal, Lord Denning cited with approval the following passage from the judgment of the House of Lords in Levene v CIR (1928):

> '. . . the word "reside" is a familiar English word and is defined in the Oxford English Dictionary as meaning "to dwell permanently or for a considerable time, to have one's settled or usual abode, to live in or at a particular place".'

Lord Denning went on to say:

> 'I derive three principles. The first is that a man can have two residences. He can have a flat in London and a house in the country. He is resident in both. The second principle is that temporary presence at an address does not make a man resident there. A guest who comes for the weekend is not resident. The third principle is that temporary absence does not deprive a person of his residence. If he happens to be away for a holiday or away for the weekend or in hospital, he does not lose his residence on that account.'

One of the other Court of Appeal judges in the 1970 case commented:

> 'This conception of residence is of a place where a man is based or where he continues to live, the place where he sleeps and shelters and has his home. It is imperative to remember in this context that "residence" implies a degree of permanence. In the words of the Oxford English Dictionary, it is concerned with something which will go for a considerable time. Consequently, a person is not entitled to claim to be a resident at a given town merely because he pays a short temporary visit. Some assumption of permanence, some degree of continuity, some expectation of continuity is a vital factor which turns simple occupation into residence.'

These comments are regarded as equally applicable to main residence relief under Ss222 and 223 TCGA 1992 and were of course relied on by the Court of Appeal in the leading case of Goodwin v Curtis (1998).

The First-Tier Tribunal judges pointed out that there were inconsistencies in S's witness statement and in her evidence before them. For example, she was very vague about the nature of the refurbishment work carried out at Earl's Court Square and when it was done. And there were no invoices, even though the cost had apparently been between £10,000 and £12,000 that she stated that she had paid in cash.

HMRC argued that it was extremely unlikely that S and her boyfriend would have lived in the small flat while extensive work was being carried out in the kitchen, given that they had a fully functioning kitchen in another apartment just a few minutes' walk away. In addition, Mrs O'Donnell had by now moved out of Coleherne Court and Victoria and her husband had decided to remain in France. This indicated that S probably did not move to Earl's Court Square or that, even if she had done so, she had not occupied the flat as a residence.

For the period of S's ownership of Earl's Court Square, utility bills for the flat were addressed to 'The Occupier'. Clearly, S had never informed the utility companies that she was the new occupant of the flat. Interestingly, shortly after completion of her purchase in June 2013, the estate agents handing the transaction wrote to her saying that it was vitally important to contact the suppliers of gas, electricity and telephone services as well as the local authority to ensure that the accounts for the relevant services and council tax were transferred into her name. The council tax bill from the Royal Borough of Kensington and Chelsea (RBKC) was sent to S at Coleherne Court. For the purpose of this charge, RBKC considered Earl's Court Square to be a secondary residence.

Another relevant pointer was that Earl's Court Square was sparsely furnished with what S stated was 'excess' furniture from her other properties and no contents insurance for the flat was ever taken out.

At one stage, S was considering the transfer of Coleherne Court to Victoria and her husband as part gift and part sale – this would be when they were thinking about returning to the UK. There was no reference to this arrangement in S's witness statement. When asked during the hearing if she had taken advice about how to effect the transfer and what the tax consequences of the gift element would be, S stated that she had but that she could not recall the detail of the advice. No documents relating to the proposed transfer were provided to HMRC (or to the First-Tier Tribunal).

In the light of all this, it is unsurprising that the First-Tier Tribunal found that Earl's Court Square was never occupied by S as a residence and so could not of course be her main residence. A CGT liability of nearly £53,000 was therefore payable, along with a penalty of more than £14,000 which was imposed under Sch 41 FA 2008 because of S's failure to notify HMRC of her chargeability to CGT in 2013/14. This case is a very good illustration of how not to go about a main residence planning exercise!

Contributed by Robert Jamieson

Failed home loan scheme

Summary - Transferring a house to trustees under a 'home loan scheme' failed so that the house remained part of the free estate on death. However, the pre-owned asset tax that had been paid was, in theory, refundable.

Mr Herbert, a widower with three children, owned and lived in the freehold house in London. In 2001, he obtained IHT advice from solicitors to implement a scheme, the purpose of which was to remove the value of his home from his estate for IHT purposes, whilst enabling him to continue to live there rent-free. The scheme is known to HMRC and the arrangement was specifically referred to as 'the Home Loan Scheme' in their 2006 guidance to the Pre-Owned Asset Tax.

Under the scheme, on 22 March 2002, when the house was worth around £1.4 million, Mr Herbert established a life interest trust with him as the life tenant and one of the trustees. He entered into a sale agreement for the trust to buy the house, but he agreed under a loan agreement that he would lend the trust the money to do so. Several weeks later, he assigned the loan to his children.

For the rest of his life, Mr Herbert continued to live in the house rent-free and remained the owner of the property on the register at HM Land Registry. With the introduction of the pre-owned assets regime, from 6 April 2005, he paid over the pre-owned asset tax of £196,000 that fell due. He died in 2013 with his house then worth £2.85 million.

On 30 June 2016, the property was sold to unrelated third parties for £3.9 million. By written demands made in June and July 2018, the children called for payment of the amounts due to them under the Loan Agreement. These were paid over by the trustees.

Decision

The First Tier Tribunal found that the loan and sale agreements should be read as one agreement. When the sale agreement was made, the trust had only £10 in assets. The only way that the trust could enter into the sale agreement was because they knew that Mr Herbert would lend the trust £1.4m to buy the house.

However, Mr Herbert did not have £1.4m to lend; he could only enter into the loan agreement on the basis that his obligation to lend the money would be extinguished through set-off against the house sale. The Tribunal found that the true effect of the combined agreements was that Mr Herbert agreed to sell the house to the trust, with completion to occur and the consideration to be paid on notice following his death.

They also concluded that the true effect of the subsequent Deed of Assignment was that Mr Herbert gifted to his three children his benefit from the sale under the composite sale and loan agreement such that they would receive the consideration on death.

The Tribunal considered the validity of the sale agreement under s2 Law of Property (Miscellaneous Provisions) Act 1989. If a contract for the sale of land does not include all the expressly agreed terms of the sale, it is void. The sale agreement alone did not incorporate all of the terms of the contract for the sale; even when read together, the sale and loan agreements did not contain all of the terms governing the sale of the House. Consequently, the Tribunal found that the agreement reached between the parties relating to the sale of the house to the trust and the loan were void. The subsequent assignment to the children had no effect as there were no sale proceeds or loan benefit that could be assigned. The Deed of Assignment was also void.

With an invalid sale agreement, the Tribunal concluded that the house, valued at £2.85 million, formed part of Mr Herbert's estate at his death.

Additionally, as Mr Herbert did not dispose of the house, he would not have had any liability to the pre owned asset tax charge, nor to any capital gains tax on the purported sale of the house to the trust. The Tribunal left it to the parties to consider whether or not these amounts were now refundable.

The Tribunal went on to consider what would have happened had the sale not been void concluding that:

- at the time of his death, the house worth £2.85 million would have formed part of Mr Herbert's estate (despite being the subject to a sale agreement in favour of the trust);

- additionally, he would have had settled property included in his estate consisting of the £10 originally settled by Mr Herbert plus £1.45 million (£2.85m less £1.4m).

The Tribunal acknowledged that the house formed part of Mr Herbert's estate and his settled estate (although with a deduction for the purchase consideration payable to the children in the case of the Trust). They stated that ‘this serves as a warning that the implementation of tax avoidance schemes can sometime have the consequence of the participants paying more tax than if they had done nothing: if you play with fire, do not be surprised if your fingers are burnt.’

John Leonard McNeill Shelford as Trustee of Herbert Life Interest v HMRC (TC07549 IHT)

Where there's a will, there's a way (Lecture P1190 – 14.22 minutes)

The First-Tier Tribunal case of Vincent v HMRC (2019) examines an interesting point, which crops up with a reasonable degree of regularity, about the possibility of the wording in a deceased individual's will creating an interest in possession for IHT purposes.

The main issue was whether the drafting of the will of Mrs Vincent's mother (Mrs Hadden) conferred a life interest in Mrs Hadden's share of the family home on her brother, Mr Thom, following Mrs Hadden's death in October 2001.

The circumstances of the dispute between the taxpayer (Mrs Vincent) and HMRC go back many years. In 1985, Mrs Hadden and her husband decided to sell their house on the occasion of their retirement, as did Mr Thom. It was determined that the three of them would jointly purchase a property known as 'Hopefield' and that, after the necessary alterations had been carried out, they would live there together for the rest of their lives. The sale proceeds of Mr Thom's house were greater than those from the sale of Mr and Mrs Hadden's property and so it was agreed by a declaration of trust dated 31 August 1985 that Hopefield should be owned by the three of them as tenants in common on the basis of:

- a five-eighths share for Mr Thom; and
- a three-eighths share for Mr and Mrs Hadden held by them as joint tenants.

Mr Hadden died in June 2001. As a result, Mrs Hadden became entitled to the Hopefield share by survivorship and to the remainder of his estate under the terms of his will. Mrs Hadden then died some four months later. Because the assets which she would have inherited from her late husband were diverted to their daughter, Mrs Vincent, by a deed of variation to Mr Hadden's will for IHT planning reasons, there was no IHT payable on her estate. However, Mrs Hadden had left the three-eighths share in Hopefield in trust to Mr Thom 'to reside therein for so long as he shall desire free of rent but he being responsible for general rates, water rates, insurance and maintenance repairs of an income nature'.

Subject thereto, the property interest was bequeathed to Mrs Vincent. Mr Thom carried on living in Hopefield until his death in 2013. His will, which had been executed a year earlier, left his interest in Hopefield to his niece, Mrs Vincent, absolutely.

HMRC argued that the words in Mrs Hadden's will conferred an interest in possession in the three-eighths share of the property on Mr Thom so that, on his death, it formed part of his estate for IHT purposes. It should be borne in mind that the deceased already owned the remaining five-eighths of the property. Accordingly, the entire value of Hopefield was chargeable to tax in 2013, with Mrs Vincent being liable for IHT at the estate rate on the trust's three-eighths share.

The case report contains the following paragraph about Mrs Vincent's views:

> 'Mrs Vincent submits that HMRC's interpretation of Mrs Hadden's will (which was first advanced some 13 years after her death) is inconceivable and was never considered by the family. Mrs Hadden's executor carried out her wishes in accordance with her intention that Mrs Vincent should inherit her parents' share in Hopefield, subject to allowing Mr Thom to live there for the remainder of his life.

> There was no intention to create the draconian rights of an interest in possession. Mrs Vincent submits that case law highlights the need for the First-Tier Tribunal to take a flexible approach when considering the provisions in a will.'

Later on, we read:

> 'Mrs Vincent argues that the intention of Mrs Hadden was that Mr Thom should be given no more than permission to reside at Hopefield as he had before her death and that the will should be interpreted to give effect to this intention rather than stretched to create the life interest postulated by HMRC.'

Everyone nowadays should be familiar with the relevant test from the Pearson case of 40 years ago that an interest in possession entails having a present right of present enjoyment of the settled property. These words would generally be accepted as conferring such an interest on Mr Thom – and therefore an interest in possession – except that, in this case, Mr Thom owned five-eighths of the property in his own name and so he already had a present right of present enjoyment – he did not need the other three-eighths to give him that right.

Nevertheless, the First-Tier Tribunal decided that the words in Mrs Hadden's will did create an interest in possession in Mr Thom's favour on the ground that they must have been intended to protect Mr Thom from a forced sale instigated by the residuary beneficiary, Mrs Vincent.

This is all very understandable, but, with respect to the two judges, they would appear to have overlooked the terms of S11 Trusts Of Land And Appointment Of Trustees Act 1976. Before any sale can take place (where there is joint involvement), this provision requires the relevant beneficiaries to be consulted and for effect to be given to the wishes of the majority by value. Accordingly, Mrs Vincent could not have forced a sale of the property without the consent of Mr Thom.

There is no indication in the judgment that this point was raised by either side, but clearly the legislation referred to would seem to undermine the whole basis for the decision. One's particular sympathies are with Mrs Vincent, given that, as the residuary beneficiary, she will have had effectively to bear the resulting IHT on the three-eighths share (which liability would otherwise not have arisen).

Contributed by Robert Jamieson

Administration

Special circumstances - Living in China

Summary – difficulties accessing HMRC's online systems from China provided a reasonable excuse for the late filing of his 2013/14 tax return but not for his 2014/5 return as by then, he fully understood the problem.

David Ferguson worked as a management consultant from the early 1980s to early 2000s. In 2006, he moved to China with his second wife, who is Chinese, and found work as a writer and editor.

Since 2006, he has made annual visits to the UK each year with his wife and son, living in a flat that he owned in Edinburgh flat. His annual stay in Scotland could be for weeks or months depending on his work and his financial situation. While in China, rented out the flat, so generating UK rental income.

HMRC raised late filing penalties for the late submission of his self-assessment returns for 2013/14 and 2014/15.

David Ferguson appealed, claiming that he had no knowledge of the daily penalties imposed until he returned his to the UK in the summer of 2015; and that he could not have any knowledge of the penalty reminders sent to warn him of the daily penalties being accrued at the time, since he could not access his:

- post in the UK while abroad;
- online personal tax account in China as the authentication process was not possible in China.

Decision

The First tier Tribunal noted that David Ferguson has been in the self-assessment regime since at least 2005 and so had over a decade of experience with the self-assessment return filing procedure and the penalty regime, given that he had been in default for virtually every year since 2005.

However, with the introduction of the two-stage verification process, HMRC confirmed that the codes generated are only valid for 15 minutes, and the Tribunal accepted that David Ferguson’s explanation that he simply could not have picked up the codes so generated within 15 minutes in China. They acknowledged that he habitually stayed in the UK in the summer and that for 2013/14, he remedied his late return with unreasonable delay. The Tribunal found that the online access issues did give David Ferguson a reasonable excuse. The daily and six-month late-filing penalties were cancelled.

This excuse was not valid for 2014/15 as he was already aware of the issue and could have filed the return at that point. Given the complexity of his tax affairs, the Tribunal found mitigating circumstances and allowed a 50% penalty reduction.

David Ferguson v HMRC (TC07562)

Reducing the chances of things going wrong (Lecture B1190 – 16.08 minutes)

Over the last two months, articles have introduced the concept of risk management, highlighting common causes of claims, highlighting why risk management is important and considered issues with engagement letters in more detail. This article is aimed at highlighting how to reduce the chances of things going wrong; common pitfalls that can arise in a professional practice and how those can be prevented. It contains practical steps that can easily be taken to minimise the risk of problems arising within a professional practice.

The topics that we are going to consider include the use of file reviews, appropriate systems for high risk areas and the creation of an appropriate "no blame" culture within the firm as well as the importance of communication. All of these will reduce substantially the chances of things going wrong within a practice. Systems for engagement letters, liability caps distance selling and fee overruns have been discussed before.

File Reviews

I am a big fan of file reviews. You should review your own files and get somebody else to review them, but in a no blame way. The file review should look at two aspects, looking first of all at compliance with the firm's processes and systems. So it would check whether or not the firm's engagement letter has been sent out, whether all file copy letters are on the file and have been initialled as complete (otherwise how do you know if a letter is in draft or a final copy), whether electronic filing is up to date, whether there is a signed engagement letter on the file. Then you check whether billing is appropriate, has billing has been done at appropriate intervals, whether the billing is in line with the fee quote. Has the client been updated in accordance with your engagement letter?

The second part of the file review looks at whether value has been added. Is there a strategy in place. If the engagement is a transaction, are you dealing with all aspects of the transaction in accordance with the engagement letter? There is a sample file review form in my book which covers most aspects of the points I am raising.

How often should they be done? Quarterly? Six monthly?

Who should do them? I think it's useful if they're done by Partners, but they could also be done by, say, a Managing Associate, someone at that level, because they are a good development skill if nothing else.

Randomly auditing files to see if they comply, whether they are being progressed and whether value is being added will help you identify where systems are failing, identifying whether there are any shortcomings in the individual who's work is being undertaken is a bonus, but that's not the main priority.

The priority is to see where problems are and to put them right before they become a problem. Drafting a file review form is important.

They can be done inter-department so somebody senior within the department could undertake the file review, but they can also be done cross-department so, for example, if you have a firm with two departments, someone from department A can undertake file reviews for department B. You don't have to have specific knowledge of the work undertaken in the department to undertake the file review.

An important question is, where do you keep the file reviews, they don't stay on the client file – that's very important. They are not a client matter. Keep them in a risk file.

Discuss them with the Partners at Partner level. They are not really for the department; they are for a higher level than that.

The time spent on file reviews should not be charged to the client, because they are not a client issue, they are a risk issue. They are there to identify problems with the systems, so that the systems can be improved and, as an aside, to identify if there is an issue within the department or at fee earner level. This will enable you to identify issues on a particular file, issues with particular individuals, issues within a department and issues within systems.

Supervision

All too often, I see claims where files have not been supervised at the appropriate level. You may have a rising star in the department; they still need to be supervised. You should still have peer to peer, or Partner to Assistant, supervision.

Post

Post is quite easy to supervise because it's physical, you can see it when it comes in and you can see it when it goes out. There should be a post review system. So all post coming in should be looked at by a Partner or senior member of staff, so that at least you can see if there are any complaints or issues. The post can be looked at very briefly before it goes to the person dealing with the file.

Again, post going out can be looked at before it goes out, particularly if it's a report or contains substantive advice.

Email

This is where more claims arise, as I've mentioned in What Can Go Wrong? an earlier article, because email is immediate and is sent out by the fee earner with email access.

You need to have a policy for emails. Some firms have a policy where junior staff don't have access to sending out emails. That can be a bit draconian and it can prevent them doing their work.

You can have a policy where junior staffs' emails go into a holding pen, so they send an email, but it doesn't actually go out until it's released by a more senior member of staff. That can work, but the problem with that is that the junior member of staff has sent the email, but it doesn't actually go until it's been reviewed and that can cause delays, and also what if that senior member of staff doesn't know the file, how will they pick up on the issues?

An alternative is that that junior member of staff has to sign up to a policy whereby they agree not to send out emails with any substantive advice until they have been approved. You then have to trust the junior member of staff to abide by that policy and you can check the file, and check their email box if you wish to, to make sure that they are abiding by that policy.

It's important that you check and have a policy that suits your firm, think about it and apply the policy.

Also relative to emails, think about whether or not you want to have an auto-complete on your email address, because that be dangerous because it can go to the wrong person by mistake and that can be very dangerous and it can also give rise to data protection issues.

Think about whether you want an address check on your email so that, when you send an email and you type in an address, your system can actually check is this the right person that you want to send the email to? Just think about it.

Meetings

It's important to hold meetings. You don't want to hold meetings to the point of it preventing you from undertaking valuable chargeable work, but meetings are a great way of passing information around the team, the office and the department. Information can be communicated quickly and at an appropriate level. Perhaps have a team meeting once a week, perhaps at the start of the week, so everybody in the team knows at a high level what's happening. In in that way if an email comes in, or a client telephones, everybody in the team has a knowledge, at high level, of who that client is and what their issues are.

It also helps to know what the team are doing, so you know where anyone is expected to be and where work pressures might arise.

That's also important, particularly if you have remote workers, perhaps have a virtual meeting, once a week so you know who is doing what. Remote workers can be an issue, because if you do have a team of remote workers, what happens if somebody doesn't log on one day, how will you know?

If you have teams across a number of offices, or a number of departments, you do need to link in with them every so often, just so you know what's happening across those department and across those offices, particularly if you have clients who are serviced across those offices and across those departments, so that information is disseminated at the appropriate level, across those offices and across those departments. Those meetings don't need to take very long, but you do need to find a way of disseminating information. If a failure to disseminate information occurs, the Courts probably won't have any sympathy with you as a firm, they are likely to say that information comes into the firm, and is therefore known to the firm.

Partners

Partners should be supervised. What happens when a Partner leaves? Partners have personal problems; they are all human beings. I am not saying that Partners need to be supervised to the nth degree, but there is perhaps the need for a policy whereby any substantial piece of advice given by a Partner, needs to be peer reviewed. If a Partner looks like they're having difficulties, a supportive environment whereby they can be supported and issues picked up, will go a long way to preventing problems in the firm.

No Blame Culture

It's really important to engender a no blame culture, but how do you do that? You don't want people to feel that they can't tell you when something is going wrong. In the firm I set up, I devised a system whereby we had breach forms, so that any breach of the firm's policy could be reported, but they were anonymous. We weren't reporting the individual who had breached the policy, merely that a breach had occurred, so that we could identify where the system had failed, so that we could improve the system. Individuals who did make mistakes

found that they got a sympathetic ear. It takes time, but it is worth bearing in mind that trying to focus on a no blame culture, which has to come from the top down, will reap dividends. You can work together to improve the way the firm works, that will prevent people from burying their heads in the sand, trying to hide problems and hoping that they will go away. As we all know, those problems can only get worse.

Communication

As I hope you all realise from what I've been saying, communication is key. All too often I see claims where there has been insufficient communication within the teams, within the departments and across the offices. If you can encourage communication on all those levels, you will have a much less risky firm, and this is much more important nowadays, particularly where cross selling is being encouraged.

I talk about the good, bad and ugly. When things go wrong, we need to treat it as a learning experience and this is extremely good risk management practice.

We don't just learn from attending courses and listening to webinars.

If you have a problem file in the office, whether it's an actual claim, or a near miss, if you're brave enough to treat it as an example and talk about the file that has gone wrong, from personal experience, it is so much more powerful.

Those people who are brave enough to talk about how something has happened to them, what has gone wrong, or what nearly went wrong but didn't, how it's been put right, or how it hasn't been put right and what has happened as a consequence, that's the best learning experience, and at least you get something good out of a bad experience.

I hope you found this helpful, these are very practical steps, small steps that have a huge impact and that will help your firm be a much less risky practice.

Contributed by Karen Eckstein (professional negligence solicitor and a CTA)

Deadlines

1 April 2020

- MTD for VAT Penalty regime starts on 1st April 2020
- Corporation tax due for periods ended 30 June 2019 (not paying by instalments)
- Corporate capital loss restriction and cap on payable R&D tax credit

7 April 2020

VAT returns and payment due for 28 February 2020 quarter (electronic payment).

14 April 2020

- Corporation tax instalment for large companies depending on accounting date
- Submit forms CT61 and pay tax for the quarter ended 31 March 2020.

19 April 2020

- PAYE, NIC, CIS, student loan liabilities for month to 5 April 2020 if not paying electronically
- PAYE for quarter ended 5 April 2020 if average monthly liability is less than £1,500

21 April 2020

- File online monthly EC sales list.
- Submit supplementary intrastat declarations for March 2020.

30 April 2020

- Accounts to Companies House for:
    - private companies with 31 July 2019 year end
    - PLCs with 31 October 2019 year end
- CTSA return deadline for companies with accounting periods ended 30 April 2019

News

Off-payroll working in private sector postponed

As businesses struggle to cope with the Coronavirus crisis, the government has recognised that now is not the time to introduce the off-payroll rules in the private sector that were due to come into effect from 6 April 2020.

Less than a week after the March 2020 Budget, Steve Barclay, Chief Secretary to the Treasury stated:

"The government is postponing the reforms to the off-payroll working rules, IR35, from 6 April 2020 to 6 April 2021."

He confirmed that the government remains committed to introducing the off-payroll rules but in the short term, believe that delaying their introduction will help reduce the strain on businesses.

No automatic paper returns

HMRC are encouraging taxpayers to file online and cut the unnecessary use of paper.

From April 2020, instead of automatically receiving a paper return, taxpayers who have filed on paper in the past will now receive a short notice to file.

If they still wish to file on paper they can download a blank version of the return or call HMRC to request one.

Employer Bulletin Budget Special

In Employer Bulletin Budget Special, the chancellor has explained how the government intends to support public services, individuals and businesses that may be affected by COVID-19.

The March Budget announced that for businesses with less than 250 employees, the cost of providing two weeks of COVID-19 related statutory sick pay for each employee will be refunded by the government in full. We are awaiting details on how this support will be obtained.

Businesses can receive support from HMRC by calling a dedicated helpline, 0800 0159 559, and may be able to agree a bespoke time-to-pay arrangement.

Business Taxation

Corporation tax loss restriction following migration

Summary - A Czech law that did not allow a company to set off losses incurred in the Netherlands prior to migrating its residence to the Czech Republic was compatible with the EU freedom of establishment.

Aures Holdings was incorporated and resident in the Netherlands. It incurred a tax loss in the Netherlands in 2007. In 2008 it set up a Czech permanent establishment, and then in 2009 it migrated its effective place of management and tax residence to the Czech Republic; leaving its incorporation status as a Dutch company unchanged.

In 2012, Aures Holdings sought to set off the carried forward loss from 2007 against its Czech taxable profit. The Czech tax authority denied the deduction on the basis that the loss was not incurred in the Czech Republic.

Decision

The CJEU decided that the principle of freedom of establishment does extend to situations of migration of residence where the incorporation of the company remains in the original member state. The availability of a loss carry forward was a tax advantage. To allow the deduction of losses for a company resident in the Czech Republic at the time of the loss being incurred but to disallow it for a company that was resident in another member state at the time the loss was incurred was a difference in treatment.

However, it found that the Czech law was compatible with the freedom of establishment, despite there being a difference in treatment, because the two situations were not comparable. The court compared a company resident in a member state that had incurred a loss in that member state, with a company that transferred its tax residence to that member state having incurred a loss in a tax year during which it was resident in another member state (without any activity being carried on in the transferee member state). It found them not to be objectively comparable and that therefore the freedom of establishment had not been infringed.

This decision is contrary to the advocate general's opinion in this case given in October 2019, in which she concluded that the test of comparability should be abandoned altogether for being too vague, while in any event presuming it to be the case in this situation.

Why it matters: This is interesting in its departure from the AG's opinion and in the fact that it did not have to consider whether the difference in treatment was proportionate and therefore avoided the issues raised in other losses cases where the losses arose either in another company or in a PE to be used in the member state of the headquarters, e.g. issues of finality. The court noted that in the case of a migration, the company 'falls successively within the tax jurisdiction of two member states' and that the freedom of establishment did not guarantee the tax neutrality of a migration.

The UK does not allow trading losses to be carried forward if the trade is carried on wholly outside the UK, meaning that if a company migrated to the UK with a historic loss, it would not be able to carry forward that loss against its UK profits. Following this decision, such a provision would not be contrary to the EU fundamental freedom of establishment.

Aures Holdings v Odvolaci financni reditelstvi (Case C-405/18)

Adapted from Tax Journal (6 March 2020)

Company purchase of own shares **(Lecture P1188 – 11.24 minutes)**

Companies can purchase their own shares but only if they meet the company law requirements.

The following are the broad company law requirements for a purchase of own shares to be lawful although any question of legality should be checked with an appropriate corporate lawyer:

- the articles must not include any restriction or prohibition to the purchase occurring;
- the shares must be fully paid up;
- the shares must be paid for on purchase unless it is taking place for the purposes of an employees' share scheme in which case it can be paid in instalments;
- the purchase must be made out of the distributable reserves although there are some cases where it can be paid out of capital (and if the amount paid is less than the lower of £15,000 and the value of 5% of the company's ordinary share capital they do not have to identify availability of distributable reserves);
- the purchase must be authorised by an ordinary resolution of the company.

Any breach of company law means the purchase is unlawful meaning the vendor continues to be the beneficial owner of the shares and is holding the proceeds on constructive trust for the company. The money, if not repaid, would be treated as a loan subject to the loans to participators rules and subject to tax under s455 CTA2010. HMRC have, in the past, tried to argue that this money should be treated as an income distribution but this has been rejected by the First Tier Tribunal.

Tax treatment

A payment in excess of the amount paid on subscription is an income distribution. This is also a disposal for capital gains purposes but any proceeds treated as income would be excluded from the capital gains computation.

For a person who has subscribed for the shares that are being repurchased, this should mean that no gain or loss arises for capital gains purposes but the same may not be true if the capital gains tax base cost is other than the subscription price – for example where shares have been bought or inherited. Any loss arising is not a 'clogged loss' which would restrict the future usage as the company has not made an acquisition of the shares – they have simply been cancelled.

For corporate shareholders, the distribution would normally be exempt for corporation tax on income purposes so will automatically be treated as capital. The substantial shareholdings exempt could apply to this gain if all relevant conditions are met.

It is possible for the distribution to be treated as a capital distribution, and therefore subject to capital gains tax where certain conditions are met. This only applies to an unquoted company which is either a trading company or holding company of a trading group.

It is important to note that the definition of trading company is a company whose business which is wholly or mainly the carrying on of a trade or trades so not such a high bar as exists for entrepreneurs' relief and other capital reliefs.

The conditions are outlined in the paragraphs below.

Ownership period

At the date of purchase of the shares, the owner must have owned the shares for five years. This is reduced to three years only if the owner became entitled to the shares on the death of the previous owner (through their will or under intestacy) and the period of ownership can include the deceased owner's period of ownership. If the shares are sold by the personal representatives, they would also be able to utilise the deceased's ownership period as would a spouse or civil partner who is transferred shares during lifetime as long as the spouse or civil partners are living together both when the shares are transferred and when the shares are repurchased.

Where a vendor has made more than one acquisition of shares, the shares sold are identified with those that give the longest period of ownership. Where share reorganisations take place, then the holding period looks back through the reconstruction.

Residency

The vendor must be resident in the UK.

Benefit to the trade

The repurchase will be capital in nature if it is for the benefit of a trade or it is to provide funds to meet a liability to IHT charged on death. The latter is fairly self-explanatory.

What is meant when we say that it must be for the benefit of the trade? This is a subjective test to determine the motive of the vendor. It is unlikely that it will be met where a significant stake is retained or where the vendor is to remain fully engaged in the business of the company. A clearance process exists.

The repurchase must not form part of a scheme or arrangement with a main purpose of enabling the vendor to participate in the company's profits without receiving a dividend or the avoidance of tax.

Substantially reducing interest

The vendor must substantially reduce their interest in the company. In determining if this has happened it is necessary to take the interests of associates into account.

The most common ways in which a person is associated with another person is if they are:

- spouses or civil partners living together;
- a person under the age of 18 and his parents;
- a person and a company with which he is connected.

A shareholder's interest is only substantially reduced if it satisfied the following two tests:

1. the percentage of the nominal value of the issued share capital owned is not more than 75% of the percentage owned before the transaction, not forgetting to take account of the fact that the issued share capital will be reduced
2. if the company distributed all its profits available for distribution the fraction that the vendor would be entitled to would be no more than 75% of what he would have been entitled to before the repurchase. This can cause problems where there are preference shares in place and a nominal £100 is used if no distributable reserves exist.

Connection

The vendor must not be connected to the company after the purchase. A person is connected with a company for these purposes if:

- he has more than 30% of the ordinary share capital, voting rights, rights to income or rights to capital taking into account all rights and powers of this associates and taking into account which he is can acquire at a future date.
- he has control of it, being the power to ensure that the affairs of a company are conducted with his wishes derived from holding shares or by any powers applied by company documents.

Clearance

The company can obtain clearance from HMRC that they are happy that the benefit to the trade test will be met. As with all clearances, they are only valid if all the relevant information is provided to HMRC. There is no right of appeal against rejection of a clearance application although it is normal for HMRC to explain why they are refusing to give clearance. It would be normal to apply for clearance under the transactions in securities provisions at the same time.

Returns

A return must be made within 60 days of the date of disposal to HMRC to inform the department that the transaction has taken place. HMRC have information powers in relation to these transactions in particular if no return is received.

Practical issues

There are certain things that cannot be overcome, such as not having held the shares for the requisite period of time. If there is not sufficient cash or distributable reserves, then it may be possible to undertake a phased purchase such that a single contract is undertaken with phased completion. There was a recent sign that HMRC were starting to look at these more closely but they seem to have relented slightly as long as there will be a substantial reduction at each purchase which means that the purchase will tend to need to be front-loaded.

Transactions in securities provisions

Reference is made above to the advisability of getting clearance under the Transactions in Securities provisions at the time that a purchase of own shares clearance is made. The following examples show how the legislation might work to the advantage of a taxpayer in a way that might mean that HMRC would attack it under the TiS provisions.

A company has £1 shares and there are 1m in issue to a single shareholder. The high level of capitalisation was due to the initial capital needs of the business and the fact that the bank would only lend to the shareholder personally rather than to the company. The company now has surplus cash in the bank and wishes to reduce the share capital.

New consideration in this case is the same as the CGT base cost. If the company buys back half of the shares for £500,000 then this is a simple return of capital by repayment of new consideration. There is no income distribution and the disposal value for CGT purposes is the same as the base cost so no capital gain arises either.

If the company decided to pay £750,000 to repurchase the shares, then there would be an income distribution of £250,000 as there is no hope that the capital gains rules can apply as it is a single shareholder. No capital gain arises as the disposal value is again the same as the base cost.

Let's change the scenario slightly. A company has 100 £1 shares in issue; those were issued to a single shareholder at par. We then have 3 £1 shares that were issued to three other individuals on conversion of loans of £100,000 (in each instance) so there is a total of 103 £1 shares but a share premium account of £299,997. The original shareholder buys the £1 shares from the other shareholders as they wish to remove themselves from the picture. He buys them at par.

At a later date, it is decided that the company is going to repurchase 53 shares from the only shareholder and is proposing to pay £154,420 that is the total 'new consideration' that has been paid for the shares. There is no income distribution on the face of it as the repayment equals the new consideration. However, the new consideration does not equal the capital gains base cost – this is only £103. It would appear that there is a capital gain arising of £154,367.

It is likely that HMRC would consider that this is caught by the TiS provisions – assuming that the company has the distributable reserves as the individual has got value out of the company which is not subject to income tax. You might be alright if there is a bona fide commercial reason.

A more complex example gives a scenario where it may not be immediately obvious there is an issue. Let us say a company (which we will call OldCo) is liquidated with a cash distribution to the shareholders of £2,046,148 plus the transfer of assets to another company (which we will call NewCo), with the value of those assets being £398,845. The consideration for the transfer is the issue of ordinary shares in NewCo. The OldCo shares had been acquired for an average cost of 2.534p per share. Tax was payable on the cash distribution (and there would have been a part disposal computation for capital gains purposes) and the share for share exchange provisions applied for the shares as it was treated as a corporate reconstruction. The shares in NewCo were denominated as 1p shares but a share premium was created as each share was actually valued at 5.13p per share.

Let us say that you have a client who had 937,152 shares in OldCo and this was replaced with an equal number of shares in NewCo. The acquisition cost of the shares in NewCo was 0.41338p per share carried through the various transactions. The company is proposing to purchase some of its shares for 4.5p per share that is less than the 'new consideration' treated as being paid so no income tax distribution occurs. However, again, as the capital gains base cost is less than that there is a capital gain arising on the difference between the 4.5p being paid and the base cost of 0.41338p per share. Once again, there is a risk of the TiS provisions applying if there are distributable reserves in the company.

Contributed by Ros Martin

VAT

MTD for VAT penalties begin

MTD for VAT went live for businesses registered on a compulsory basis for VAT periods beginning on or after 1 April 2019. At the time, HMRC confirmed that no penalties would apply in the first 12 months of MTD for businesses that did not have digital links for the transfer or exchange of data between programs, products and applications used as functional compatible software. However, this only applied if they made a genuine effort to comply with MTD requirements. There is no equivalent light touch for late payment or filing penalties.

A year on, and this light touch approach has come to an end for most businesses. From 1st April 2020, exchange of data between software packages must now be digitally linked. All businesses must ensure that they have adequate systems in place to ensure that their software is fully compliant. Where businesses fail to comply with MTD, they could face significant penalties.

Where clients were able to defer the start of MTD for VAT due to the complex nature of their business, the 12-month soft-landing period for digital links is delayed until 1st October 2020.

Food or confectionary?

Summary – Truffle–like balls made from natural ingredients including dates and nuts, with no added sugar, were confectionary and standard-rated.

Nouri Truffles, subsequently called “Vegan healthy balls” were small balls made from dates, nuts and other natural ingredients with no added sugar. They were produced in three flavours:

- The matcha green tea flavoured balls are a green/mid brown colour with a dusting of green flakes (Cashew paste, pumpkin seeds, dates, sultanas, almonds, mil- let flakes, green tea matcha (2%);

- The coconut and chia seed flavour are pale, creamy brown in colour and have darker brown flecks in them. They are coated with flakes of desiccated coconut (Coconut and chia seed: coconut flakes (24%) coconut paste, apricots, almonds, sultanas, coconut butter, dates, chia (5%));

- The chocolate and hazelnuts flavour are dark brown with visible pieces of nut inside and a coating that appears to be powdered nuts (Dates, hazelnut paste (30%), chocolate (10%), hazelnuts (7%), almonds, flavouring: vanilla).

They were sold in packs of three and also in a "luxury box" of 16 balls.

The company claimed that the balls were launched to fill a gap in the market for healthier fruit based snacks that were additive free and not over-sweet. They were promoted as being vegan, gluten free and healthy. The balls were packaged in a luxurious way and promoted as a luxurious item in order to appeal to customers who might not normally seek out such a healthy snack.

HMRC decided that the balls should be standard rated as confectionary and Corte Diletto UK Limited appealed arguing that they were zero rated food.

Group 1 Schedule 8 VATA 1994 zero-rates food unless it is classed as an excepted item. Item 2 of the excepted items states that 'confectionery includes chocolates, sweets …. and any item of sweetened prepared food which is normally eaten with the fingers'. HMRC's VAT Notice 701/14 at paragraph 3.6 states that items of sweetened prepared food do not need to have added sweetening if they are inherently sweet. (This came from Premier Foods [2007] EWHC 3134 (Ch): confectionary could include food which was naturally sweet).

In addition, Corte Diletto UK Limited asserted that similar competitor products were being treated as zero-rated and that HMRC's classification of the products as standard rated breached the EU principle of fiscal neutrality.

Decision

The First Tier Tribunal stated in reaching their conclusion, the correct test to apply was what was the view of the ordinary man in the street.

The First Tier Tribunal concluded that the balls were confectionary as they were 'sweetened prepared food which is normally eaten with the fingers'. It was clear that the balls were being presented as a sweet treat, comparable to, but healthier than, ordinary chocolate truffles.

They rejected the idea that the balls were zero rated cake as they did not look or taste like a cake, and were not marketed as such. In fact, the Tribunal considered in some detail how the truffle-like balls were marketed, noting that its Facebook page and the company's website marketed the product as a luxury treat.

The Tribunal stated that In order for a difference in the VAT treatment of two products to constitute a breach of the principle of fiscal neutrality, Corte Diletto UK Limited would need to show that one or more of the competitors' products were identical or similar to its products from the perspective of the typical consumer, that those competitor products had been correctly zero-rated and that the competitor products met the same needs of the consumer as its own products. The Tribunal concluded that Corte Diletto UK Limited had not begun to satisfy these requirements and so found that there was no breach of the principle of fiscal neutrality.

The Tribunal concluded that the balls would be considered by the ordinary man in the street as confectionary and so were standard rated.

The appeal was dismissed.

Corte Diletto UK Limited v HMRC (TC07570)

Supply of medical care, not staff

Summary –The services provided by a company were the supply of exempt medical care and so VAT registration was not required.

From November 2011, Ayrshire and Arran Health Board ('the Board') provided prisoner healthcare at HMP Kilmarnock and put a contract out to tender. Having won the Board's tender, Archus Trading Limited was incorporated with five GP shareholders and directors. The nature of the company's business was described as "general medical practice activities".

The contract between the Board and Archus Trading Limited stated that Archus Trading Limited was engaged in "providing staff to the NHS so that the NHS can meet their obligations in relation to the healthcare of inmates of HMP Kilmarnock". Under the contract, Archus Trading Limited were required to assess all new prisoners, provide GP clinics in the Health Centre facility, provide communication with community based GPs to ensure continuity of care on release and transfer summaries where prisoners are transferred to another prison The company had to provide an out-of-hours service providing advice, remote prescribing and GP attendance and were required to actively participate in multi-disciplinary teamwork.

On 16 August 2016, HMRC wrote to Archus Trading Limited informing them that they should be VAT registered as supplies of staff are liable to standard rated VAT and they had exceeded the registration threshold. The contract stated that it was the responsibility of the Board to provide the medical care and not the Archus Trading Limited.

Archus Trading Limited appealed. The company was aware that it had been trading above the registration threshold but had not registered for VAT, believing that its supplies were exempt from VAT under Item 1 Group 7 Schedule 9 VATA 1994 as supplies of medical care.

Decision

The First Tier Tribunal stated that the key issue was to decide was whether Archus Trading Limited simply supplied staff or whether they provided a medical care service.

They found that the Board exercised no control in relation to how the company delivered medical care in the prison. The Board's management had largely ignored the contract that had been signed, and on which HMRC relied.

Archus Trading Limited decided on ways of working, training requirements, the provision of locums and all disciplinary matters. If there was a major change in working practices service managers in the Board were consulted but only to ensure that "...there were no downstream adverse effects that we were not aware of...".

The First Tier Tribunal was clear that Archus Trading Limited was providing medical care. The Tribunal found that the direction and control of the GPs and locums rested at all material times with Archus Trading Limited, and not with the Board. The supplies made consisted of the provision of medical care by suitably qualified medical practitioners. Those supplies fell within the exemption from VAT and so there was no need to be registered for VAT.

The appeal was allowed.

Archus Trading Limited v HMRC (TC07557)

Reasonable excuse - remote part of UK

Summary – When the only person able to operate SAGE in a remote part of the UK became ill, it was held to be a reasonable excuse that nobody else who could file and pay the VAT due on time.

Eglas Limited carried on a micro business of landscape gardening in Ynys Mon (Anglesey) so a remote part of the UK. The company and had registered for VAT with effect from 26 April 2012.

Like many owner managers Robert Evans worked long hours and so in 2015 the company employed an accounts manager for one or two half days a week who used SAGE for accounting and VAT purposes. Robert Evans totally relied on the accounts manager so that he could to concentrate on the business operations.

On 29 September 2017 the accounts manager broke her left upper arm in two places and was absent from work between 29 September 2017 and 23 April 2018. The company believed that her absence from work constituted a reasonable excuse for their VAT defaults that occurred from 10/17 onwards.

Eglas Ltd appealed against HMRC's decision to issue VAT default surcharges for the periods 10/17, 04/18, 10/18 and 01/19 arguing that they had a reasonable excuse.

HMRC argued that the business had taken the risk to rely solely on their accounts manager for preparation and payment of VAT and accordingly took on the risk inherent therein. In addition, Although her accident happened on 29 September 2017 was unforeseen, but the due date for the Period 10/17 was 07 December 2017. This gave the company almost ten weeks in which to make alternative arrangements to ensure compliance with their tax obligations.

Decision

The First Tier Tribunal found that, due to the remote location of the business and despite having made extensive enquires for temporary help with SAGE, Eglas Limited had only managed to find help for one day from an employee of another firm who took one day's annual leave to assist. There was considerable confusion and uncertainty in Period 10/17 that caused the delay in payment of the VAT due. It was only at the point where the accounts manager indicated that she did not intend to return to work that action was taken to find a permanent replacement. The Tribunal concluded that there was a reasonable excuse that lasted until period 04/18.

Accordingly, the company should have been in the surcharge liability regime since period 04/18, rather than 10/17, when the first SLN Extension was issued. All subsequent defaults for periods namely Period 10/18 and Period 01/19 were accordingly subject to reduced percentage defaults and so reduced financial surcharges.

Eglas Limited v HMRC (TC07506)

R&C Brief 2 (2020): Zero rating of dispensing drugs extended

This brief announces a change to UK VAT law to allow the zero rating of the dispensing of drugs prescribed by appropriate practitioners from the European Economic Area (EEA) and Switzerland. This is as a result of changes introduced in the Human Medicines Regulations 2012.

Currently, where drugs and other qualifying goods are prescribed to an individual for their personal use by an appropriate practitioner and dispensed by a registered pharmacist are zero rated for VAT.

Medical doctors, dentists and other health professionals authorised under the Human Medicines Regulations 2012 are deemed to be appropriate practitioners for VAT purposes. Prescriptions from health professionals from the EEA and Switzerland currently do not fall within the zero rate when dispensed by UK pharmacies.

These changes align the UK's VAT legislation with the Human Medicines Regulations 2012 which is administered by the Department of Health and Social Care (DHSC) and allows prescriptions written by EEA health professionals to be dispensed by UK pharmacies. They extend the VAT zero rate to such private prescriptions for the first time subject to the same conditions as currently apply to UK prescriptions.

https://www.gov.uk/government/publications/revenue-and-customs-brief-2-2020-vat-zero-rating-for-the-dispensing-of-prescribed-drugs