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Personal tax

Sky football commentator (Lecture P1326 – 20.51 minutes)

Summary – With both the mutuality of obligation and control tests satisfied, Alan Parry's hypothetical contracts with BSkyB were effectively contracts of employment.

Alan Parry is a football commentator who has provided his services to Sky through his personal services company, Alan Parry Productions Limited. This case covers the tax years 2013/14 to 2018/19 when HMRC argue that he was caught by the IR35 legislation, raising PAYE and NIC determinations totalling just over £350,000

Over these years, there were four similar contracts under which Alan Parry Productions Limited provided Alan Parry's services as a commentator, presenter or interviewer. Each contract was for a fixed period and fees, plus expenses, for a fixed number of matches each year, including bank holidays and weekends. On each occasion, Sky determined whether he worked at the football ground or in the studio.

Prior approval was needed from Sky before Alan Parry could provide his services to other media businesses.

With Sky's approval, the contracts permitted a substitute to be provided. However, on the sole occasion when Alan Parry missed a match, Sky supplied his replacement from their own team. Sky controlled the programme and its timing.

Alan Parry Productions Limited appealed to the First Tier Tribunal.

Decision

The First Tier Tribunal concluded mutuality of obligation existed as Alan Parry was obliged to provide his services to Sky who in turn was obliged to pay him the fixed amounts specified in the contracts.

Unsurprisingly, the substitution clause was of little relevance as evidence demonstrated Sky clearly wanted was Alan Parry's personal services and not someone else that he selected to present on his behalf.

The Tribunal also concluded that the level of control exercised by Sky demonstrated an employer/employee relationship as Sky had control over when, where, what and how Alan Parry worked.

The Tribunal concluded that, standing back, overall the relationship between Sky and Alan Parry was one of employment. He was not carrying on business on his own account.

The appeal was dismissed.

Alan Parry Productions Limited v HMRC (TC08519)

Umbrella company and construction workers (Lecture P1326 – 20.51 minutes)

Summary – There was no mutuality of obligation under an overarching contract between construction workers and the umbrella company employing them. Each job was a separate employment, with the worker travelling to and from home to a 'permanent workplace'. Travel expenses were not deductible.

Within the construction industry, contractors frequently find workers through an agency. Where the agency does not want to act as the employer, it may choose to use the services of an umbrella company, who employs the construction workers, enabling these individuals to work across multiple assignments.

Exchequer Solutions Limited was such an umbrella company, employing workers under an overarching contract of employment and providing them to agencies, who then supplied the workers to construction industry contractors.

The main issue was whether Exchequer Solutions Limited employed individuals on a continuous basis under the overarching contract of employment for all work assignments undertaken by the individuals. If this was the case, each workplace would have been a temporary workplace and travel expenses would be tax free.

Alternatively, as contended by HMRC, each individual assignment was covered by a separate contract for each job. This would mean that each workplace was a permanent workplace, with PAYE and NICs payable on then travel.

Decision

The First Tier Tribunal found that Exchequer Solutions Limited was under no obligation to provide work or pay individuals when they were not working. Equally, the workers were under no obligation to carry out work through Exchequer Solutions Limited. With no ongoing contract of employment, a separate contract was created for each individual assignment. Travel and subsistence expenses were taxable as they were working at a permanent place of work.

Exchequer Solutions Limited v HMRC (TC08506)

Director or not? (Lecture P1326 – 20.51 minutes)

Summary – The taxpayer's claim that he was not a director was rejected, meaning that the debt transfer notices for PAYE and NIC were valid.

Having been made redundant, Nigel Gradidge decided to work for himself. Under the instructions of one of the agencies for which he worked, he used Think Accountancy Limited to set up a personal service company. He remembered completing forms to do with giving Think Accountancy Limited permission to deal with tax and other matters, but he claimed that he received nothing about being a director.

He was paid by a combination of low salary and dividends. He claimed that having always been an employee in the past, before signing up with Think Accountancy Limited, he contacted HMRC to confirm that being paid via a limited company in this way was common practice.

After some time, he became aware of press reports concerning Think Accountancy Limited and changed advisers. Subsequently, he applied to have his personal service company struck off.

Following an enquiry, HMRC found that Think Accountancy Limited was a managed service company provider, and Nigel Gradidge's company was a managed service company. HMRC issued PAYE and NIC determinations of around £31,000. With Nigel Gradidge's company struck off, HMRC issued debt transfer notices to transfer the liability to Nigel Gradidge personally.

Nigel Gradidge accepted that the managed service company rules applied but disputed that the debt could be transferred to him as he claimed that he was not a director. He claimed that, although he was shown as a director at Companies House, he was simply a worker and not a 'real' director. That role was effectively performed by Think Accountancy Limited.

Decision

The First Tier Tribunal found that Nigel Gradidge was legally a director of his personal service company. It was clear he knew that he was operating through a company as he had checked with HMRC that it was acceptable to operate in this way.

The First Tier Tribunal confirmed that the test in s.688A ITEPA 2003 does not require the individual to be a director at the time the notice is issued. To transfer the debt, the individual must have been a director at the time that the relevant debt accrued.

Nigel Gradidge's appeal was dismissed.

Nigel Victor Gradidge v HMRC (TC08514)

Loan derived from pension **(Lecture P1326 – 20.51 minutes)**

Summary – A loan made to a taxpayer was an unauthorised member payment, making her liable to the unauthorised payment charge and surcharge. However, HMRC could not raise the assessment as the taxpayer had not acted carelessly.

Elaine Curtis was described as 'honest' and 'hard working' who had to resort to payday loans because of financial difficulties. A colleague recommended a financial adviser. He arranged a loan of £20,000 for her with Blu Funding and recommended she move her occupational pension, which had a transfer value of nearly £50,000, from a previous employment to a new private pension with a company called Fast Pensions. Elaine did this, not knowing the transactions were connected.

Eventually, after repaying some £13,500 of the loan, she realised she had been badly advised and had, in effect, lost her pension.

Following an enquiry, HMRC decided the loan was derived from the Elaine Curtis' pension and, as such, was an unauthorised member payment (s.160 FA 2004). HMRC issued both an unauthorised payments charge and an unauthorised payments surcharge.

Elaine Curtis appealed.

Decision

The First Tier Tribunal found that the loan made to Elaine Curtis by Blu Funding was an unauthorised member payment, although she had no reason to know that was the case. She was therefore liable to the charge and surcharge.

However, HMRC was not entitled to make the assessment because it had not satisfied the conditions under s.29 TMA 1970. Elaine Curtis had not acted carelessly. She had no cause to suspect her loan from Blu Funding was connected with or conditional on the transfer of her pension to Fast Pensions. Neither was it reasonable to expect her, after HMRC began its enquiries, to carry out further research or appoint an adviser. She had no access to any of the information in HMRC's possession which identified the link between her pension and her loan and there was 'no way in which she could reasonably obtain that information'.

Further, the tribunal did not consider that, even if she had managed to contact the financial adviser or Fast Pensions, 'a reasonable taxpayer' might have discovered the possibility there had been an unauthorised payment.

However, in case it was wrong and the assessment was valid, the tribunal considered whether Elaine Curtis was liable to the surcharge. It concluded she was not. The judge said there was nothing more she could have done to avoid making the unauthorised payment. She obtained what she believed to be independent advice from an adviser recommended by a colleague. It appeared she had been the 'unfortunate victim of a scam'.

The appeal was allowed.

Elaine Curtis v HMRC (TC08499)

Adapted from the case summary in Taxation (23 June 2022)

EIS – 'Risk-to-capital' condition (Lecture B1329 – 12.21 minutes)

The enterprise investment scheme (EIS) is designed to help smaller, higher-risk trading companies to raise finance by offering a range of tax reliefs to investors who subscribe for shares in those companies. The EIS legislation provides for both income tax and capital gains tax reliefs.

An individual is eligible for EIS income tax relief if several conditions are satisfied: the 'risk-to-capital' condition must be met; the relevant shares must be issued to a 'qualifying investor' before 6 April 2025; certain 'general requirements' must be met (e.g., as to the purpose of the share issue and use of the money raised); and the company must be a 'qualifying company' in relation to the relevant shares (ITA 2007, s 157).

The 'risk-to-capital' requirements

The government introduced the 'risk-to-capital' condition (in FA 2018) to discourage 'capital preservation' arrangements. Such arrangements are contrary to the policy intention of the scheme.

Even though the risk-to-capital condition is one of six basic conditions for eligibility to EIS relief, HMRC considers that it sits above the other eligibility requirements as a 'gateway' to EIS relief. On that basis, satisfying the risk-to-capital condition is a fundamental first step to obtaining EIS relief.

The risk-to-capital condition has two requirements, both of which must be met (ITA 2007, s 157A). These are that, having regard to the circumstances when the shares were issued, it would be reasonable to conclude that:

1. The company has the objectives of growing and developing its trade in the long-term (s 157A(1)(a)). For groups of companies, this reference to the company's trade is to the trade of the group companies taken together if their activities were regarded as a single trade (ITA 2007, s 157A(4)).

2. There is a significant risk of losing a greater amount of capital than the 'net investment return' (i.e., income such as dividends or interest) or capital growth to the investors, taking into account the value of EIS relief (s 157A(1)(b)).

There is no definition of 'long-term' for the purposes of the first requirement. However, HMRC's guidance points to situations where this requirement would not be satisfied. HMRC states (in its Venture Capital Schemes manual at VCM8540):

> 'A company with limited assets and few, if any, employees that is set up solely to deliver a project, or a limited series of projects, often referred to as a Special Purpose Vehicle – that will generate a certain amount of money once the project is complete, such as a reasonably steady income stream or gains on disposal of the asset created, would not be considered to have objectives for long-term expansion.'

On the second requirement, there must be a significant risk of losing a greater amount of capital than the net investment return, there is no definition of 'significant risk' in this context. However, the legislation does state that 'risk' must be determined by reference to the loss of capital (meaning the loss of amounts subscribed for the shares) and the net investment return for investors in general, whether that is by way of income, or capital growth (ITA 2007, s 157A(2)(a)).

Factors to consider

The legislation lists seven circumstances which are among those to be taken into account in considering when the shares were issued for the purposes of determining if the risk-to-capital conditions have been met (ITA 2007, s 157A(3)). These are broadly:

1. The extent to which the company's objectives include increasing the number of employees or its trade turnover;
2. The nature of the company's income sources, including the extent to which there's a significant risk of the company not receiving some or all of the income;
3. The extent the company's present or future assets could be used to secure financing;
4. The extent to which the company's activities are sub-contracted to unconnected persons;
5. The nature of the company's ownership structure or management structure;
6. How any investment opportunity is marketed; and
7. The extent of any arrangements under which investment opportunities in the company are or may be marketed or associated with investment opportunities in other companies or entities.

HMRC's guidance (at VCM8542) points out that this list is not exhaustive, and all factors must be considered.

Disputes with HMRC

The subjective nature of the risk-to-capital condition is such that disputes between companies (or their advisers) and HMRC on whether the condition is satisfied are not uncommon.

HMRC's advance assurance facility for EIS investments will not provide advance assurances where it appears from the information available to HMRC that the investment is likely to fail the risk-to-capital condition.

In addition, HMRC will carry out post-investment checks on companies on a risk basis (VCM8550).

Case law

The risk-to-capital condition has been considered in cases before the First-tier Tribunal. For example, in CHF PIP! PLC v Revenue and Customs [2021] UKFTT 383 (TC), the company's appeal against HMRC's refusal to authorise the issue of EIS compliance certificates was dismissed, as the company's trade was not considered to have been conducted on a commercial basis with a view to profit. Strictly speaking, this meant the First-tier Tribunal (FTT) did not have to consider the further issue of whether the 'risk-to-capital' condition was satisfied. Nevertheless, in the tribunal's judgment, the company did not satisfy the risk-to-capital condition, because on the share issue dates, the company did not have the objective of growing and developing its trade in the long term.

By contrast, in Inferno Films Ltd v Revenue and Customs [2022] UKFTT 141 (TC), the appellant film production company acquired the rights in the unpublished script for a film. In April 2019, the company issued 450 shares to eight investors for £50,000. This fundraising enabled the company to make the film. HMRC subsequently refused to authorise the issue of EIS certificates to the investors, because the company was considered to have failed the risk-to-capital condition. HMRC cited factors including the company's lack of employees and the extent of its subcontracting.

However, the FTT found that in April 2019, the prospects of any net investment return to the investors generally were extremely speculative. In the tribunal's view it was (and remained) perfectly possible that the investors would lose the amounts subscribed by them for their shares. Furthermore, the tribunal held that it was reasonable to conclude based on all the circumstances in April 2019 that the company had objectives to grow and develop its trade in the long term and that the company had been doing its best to transform those objectives into reality since April 2019. The company's appeal was allowed.

Conclusion

The generic indicators of a company's ambitions to grow and develop include plans for increasing over time its revenues, customer base and number of employees. In practice, it would be sensible to ensure that documentation issued to potential investors (such as a prospectus) is checked against the risk-to-capital condition (along with the other EIS conditions, of course), plus HMRC's guidance on its approach when considering whether the condition is satisfied.

Contributed by Mark McLaughlin

SEIS conditions

Summary – The film production company met the qualifying conditions and SEIS relief applied.

Cry Me A River Limited was a film production company set up as a special purpose vehicle to create a specific film.

In 2015, it obtained advance assurance that it was a qualifying company for the seed enterprise investment scheme (SEIS) and that allotted shares would be qualifying shares.

In 2017 and 2018, it issued B shares to three investors and, in 2019, it applied for authority to issue SEIS certificates. HMRC rejected the application for two of the investors on the basis that the company did not meet the qualifying criteria. In essence, the company could not show that it had the intention to grow and develop in the long term.

Decision

The First Tier Tribunal found that it was apparent that the use of special purpose vehicles for each production was common in the film industry. This process, in effect, ringfenced profitable projects from unprofitable ones. However, the fact that there was only capacity, 'certainly at the embryonic stages of the business, to produce one film at a time' could not preclude a reasonable conclusion that there was an intention to grow and develop the trade in the long term. This was consistent with the First- Tier Tribunal's decision in Inferno Films Ltd (TC08472)

Further, it had a qualifying business of co-production. Its role was more significant than that of its co-producer. Finally, there were no disqualifying arrangements which precluded SEIS authorisation for the shares issued to the other two investors.

The issue of shares met the qualifying conditions for SEIS. Cry Me A River Limited*'s* appeal was allowed.

Cry Me A River Limited v HMRC (TC8507)

Adapted from the case summary in Taxation (30 June 2022)

Capital taxes

Loan repayment not deductible (Lecture P1326 – 20.51 minutes)

Summary – The cost of repaying a loan made to a company was not allowable expenditure when calculating the taxpayer's chargeable gain.

At some unknown time, Everscot Limited had borrowed an unknown amount from the Royal Bank of Scotland.

Later, Ignatius Tedesco negotiated to sell the shares in Everscot Limited to the Glasgow MENA Cultural and Welfare Trust for £1.5 million. By the time of this sale, the cost of repaying the loan totalled £693,285 but under the sale agreement the shares would be sold free of this debt and so Ignatius Tedesco used the share proceeds to clear the debt.

On 30 April 2018, Ignatius Tedesco filed his 2016/17 tax return claiming:

- the repaid loan as a deduction in arriving at the chargeable gain;
- entrepreneurs' relief on the resultant gain.

On 14 February 2019, HMRC opened an enquiry into the 2016/17 return, accepting that Entrepreneurs Relief was available but querying the incidental costs deducted of some £705,000. Subsequently, HMRC issued a closure notice disallowing the expenditure incurred relating to the loan repayment.

Following an unsuccessful Statutory Review, Ignatius Tedesco appealed to the First Tier Tribunal.

Decision

The First Tier Tribunal found that the debt repayment was not an allowable cost in calculating the reported chargeable gain. Although it increased the share value, the First Tier Tribunal concluded that:

> " the discharge of Everscot's borrowing was not expenditure "on" the shares, and it was not expenditure that was reflected in the "state or nature" of the shares."

As a result, the loan repayment costs did not meet the requirements of s.38(1)(b) TCGA 1992 and so did not reduce the taxable capital gain on the share disposal.

The appeal was dismissed.

Ignatius Tedesco v HMRC TC08498

One share short (Lecture P1326 – 20.51 minutes)

Summary – With no evidence that other shareholders held shares on his behalf, his holding of less than 5% of a company meant he was ineligible for entrepreneurs' relief on their sale.

Badger Group (Holdings) Limited was the holding company for a group that carried on an estate agency business. Seamus Kavanagh was both director and shareholder of this company.

Seamus Kavanagh had originally held shares in another company but following a share for share exchange, he acquired 1,842 shares, just under 5% , in Badger Group (Holdings) Limited, with three other shareholders holding the remaining shares.

On 31 January 2017, Badger Group (Holdings) Limited was sold to a third party, with Seamus Kavanagh receiving exactly 5% of the total proceeds. He reported his gain in his 2016/17 and claimed entrepreneurs' relief.

The issue in this case was whether he held at least 5% of the company's ordinary share capital and voting rights for the 12 months ending with the date of disposal. HMRC argued that he held 4.997% of Badger's ordinary shares rather than the necessary 5% and so denied the relief.

Seamus Kavanagh appealed, arguing that the other shareholders held 0.003% of the shares on trust for him, making him the beneficial owner of 5% in total and, so eligible for entrepreneurs' relief.

Decision

The First Tier Tribunal found that there was no agreement or understanding that any shares not registered in Seamus Kavanagh's name were held by any of the other shareholders on his behalf. Indeed, the shareholders' agreement stated that each of the registered owners was the beneficial owner of their own shares.

At no point had Seamus Kavanagh questioned receiving dividends based on 1,842 shares, rather than on a 5% holding that he claimed to have.

The appeal was dismissed.

Seamus Kavanagh v HMRC [2022] TC08500

Period of ownership for PPR (Lecture P1326 – 20.51 minutes)

Summary - Period of ownership for PPR relief meant 'the period of ownership of the dwelling house that is being sold' and not from when the land was bought.

On 26 October 2010, Gerald and Sarah Lee jointly purchased a plot of land for £1,679,000. The original house on the land was demolished and a new house built in its place that was completed on 15 March 2013. Four days later, they took up residence in the new house. In May 2014, the couple sold the property for £5,995,000.

This appeal related to the 'period of ownership' for principal private residence relief. As was stated in Taxation (23 June 2022), did the period of ownership for only or main residence relief purposes cover the:

- 43 months between the acquisition of the land on which the house was demolished and the sale of the land with the house that was subsequently built, or
- Period between the date the newly developed house was completed and disposal?

HMRC argued that as a matter of construction, period of ownership in the legislation clearly refers to land. The couple acquired, owned and disposed of a single asset, being an interest in land. They made changes to that asset by demolishing the house which was part of that interest in land at the time of acquisition and constructing a new house. As a result, HMRC then calculated the principal private residence relief due as 18/43 of the gain, being the last 18 months of ownership.

The couple stated that the legislation was clear that 'period of ownership' related to the dwelling house and under s.223(1) TCGA 1992, no part of a gain shall be a chargeable gain if the dwelling-house or part of a dwelling-house has been the individual's only or main residence throughout the period of ownership.

Decision

The First Tier Tribunal concluded that the legislation contained no clear definition of period of ownership. On a natural reading, 'period of ownership' meant the 'the period of ownership of the dwelling house that is being sold'. The Tribunal commented that no mention is made of land in reference to 'period of ownership' in the legislation.

Consequently, the couple's appeal was allowed.

Gerald Lee and Sarah Lee v HMRC (TC08502)

Trusts for Vulnerable Beneficiaries – part 1 (Lecture P1327 – 9.02 minutes)

Who is a 'vulnerable beneficiary'?

For income tax and CGT purposes, a vulnerable beneficiary is either:

- someone under 18 whose parent has died, or
- a disabled person eligible for any of the following benefits (even if not received):
  - Attendance Allowance (either the care component at the middle or highest rate, or the mobility component at the highest rate);
  - Personal Independence Payment;
  - an increased disablement pension;
  - Constant Attendance Allowance;
  - Armed Forces Independence Payment
- someone who is unable to manage their own affairs because of a mental health condition covered by the Mental Health Act 1983.

Tax issues

Special rules apply for income tax and CGT, where a trust has a vulnerable beneficiary. If there are beneficiaries who are not vulnerable, the assets and income for the vulnerable beneficiary must be:

- identified and kept separate, and
- used only for that person.

Only this part of the trust gets special tax treatment.

To claim special treatment for income tax and CGT, the trustees must complete the 'Vulnerable Person Election' form [VPE1], which the trustees and beneficiary must both sign. If there is more than one vulnerable beneficiary, each needs a separate form.

Income tax

The trustees are entitled to a reduction in income tax, calculated as follows:

- Work out what the trust income tax would be if there were no claim for special treatment; this will, of course, depend on the type of trust.
- Then work out what income tax the vulnerable person would have paid if the trust income had been paid directly to them as an individual.
- The trustees can then claim the difference between these two figures as a deduction from their own income tax liability.

Example

A discretionary trust is set up for a qualifying disabled person. During 2022/23 it receives £20,000 of gilt interest and £10,000 of dividends. There are no trust expenses.

The beneficiary has no income of their own.

Calculate the initial tax due by the trustees and the revised figure if a vulnerable beneficiary claim is made.

1. Tax due by trustees before claim

Interest	
£1,000 [standard rate band] @ 20%	200
£19,000 @ 45% =	8,550
Dividends	
£10,000 @ 39.35% =	3,935
	£12,685

2. Revised figure

If the beneficiary owned the investments directly, against the interest they would be able to use:

- PA of £12,570
- PSA of £1,000
- Starting rate band of £5,000

So, the tax calculation would be:

Interest	
£1,430 @ 20% =	286
Dividends	
£2,000 @ nil	-
£8,000 @ 8.75%	700
	£986

The trustees can therefore claim to reduce the income tax payable from £12,685 to £986, by making a claim for a reduction of £11,699.

Trusts for Vulnerable Beneficiaries – part 2 (Lecture P1328 – 11.54 minutes)

In this second part we consider the capital taxes implications for trusts created for vulnerable beneficiaries.

CGT

If the trust is for vulnerable people, trustees can claim a CGT reduction, calculated as follows:

1. Work out what CGT would be payable under the normal rules for trustees.
2. They then work out what the beneficiary would have to pay if the gains had come directly to them.
3. The trustees can claim the difference between these two amounts as a reduction in their CGT payable, using form SA905.

Note that this special CGT treatment does not apply in the tax year when the beneficiary dies.

Example

Trustees of a vulnerable beneficiary trust make gains in 2022/23 of:

- £27,000 on quoted investments, plus

- £120,000 on residential property (which had not been lived in by the beneficiary).

The beneficiary's own income uses up £9,000 of their basic rate band.

Calculate the initial CGT due by the trustees and the revised figure if a vulnerable beneficiary claim is made.

1. Initial tax due by trustees

    - They have an annual exemption of £6,150

    - CGT is:

£27,000 @ 20% =	5,400
(£120,000 - 6,150) @ 28% =	31,878
	£37,278

2. If the beneficiary disposed of the assets directly, the position would be:

    - Residential property gains (£120,000 - 12,300) = £107,700

(£37,700 - 9,000) = £28,700 @ 18% =	5,166
(£107,700 - 28,700) = £79,000 @ 28% =	22,120
	27,286

    - Other gains

£27,000 @ 20% =	5,400
	£32,686

Trustees can therefore claim to reduce the CGT payable from £37,278 to £32,686, by making a claim for a reduction of £4,592.

Making an election

Form VPE1 must be completed for each vulnerable beneficiary. The election takes effect from the date specified on the form. Any income or gains before the date the election takes effect are taxed under normal trust rules, even if the election takes effect part way through the same tax year.

You must make the election no later than 12 months after 31 January following the tax year when you want the election to start.

Inheritance tax

A vulnerable person is defined differently for IHT purposes. These are the situations when trusts for vulnerable people get special IHT treatment:

- For a disabled person whose trust was set up before 8 April 2013 - at least half of the payments from the trust must go to the disabled person during their lifetime.

- For a disabled person whose trust was set up on/after 8 April 2013 - all payments must go to the disabled person, except for up to £3,000 per year (or 3% of the assets, if smaller), which can be used for someone else's benefit.

- When someone suffering from a condition that is expected to make them disabled sets up a trust for themselves.

- For a bereaved minor - they must take all the assets and income at (or before becoming) 18.

The IHT advantages of creating such a trust are:

- Lifetime gifts into trust are PETs rather than being immediately chargeable to IHT;

- Transfers to vulnerable beneficiaries by the trustees do not suffer exit charges;

- There are no 10-year charges on the trust property.

When the beneficiary dies, any assets held in the trust on their behalf are treated as part of their estate for IHT purposes.

Contributed by Kevin Read

Multiple trusts – tax-efficient thoughts **(Lecture P1329 – 19.57 minutes)**

The legislation introduced by F(No2)A 2015, which is found in Ss62A – 62C IHTA 1984, was aimed at making the continued use of multiple pilot trusts less attractive. Given that HMRC were defeated in CIR v Rysaffe Trustee Company (CI) Ltd (2003) when they attempted to tax five identical settlements as a single composite settlement under S64 IHTA 1984, it was surprising that FA 2006, which made sweeping changes to the IHT relevant property regime, contained no specific provisions to counter these tax planning arrangements.

It was left to George Osborne some years later to limit the advantages of multiple trusts by ensuring that, where value is added to two or more settlements simultaneously, the value of such additions must be taken into account for the purpose of calculating the IHT charges for 10-year anniversaries and exits from 18 November 2015 onwards.

Unfortunately, from the HMRC standpoint, these new rules are not as effective as they might have been, given that the requirement to include the same-day additions to the various settlements is restricted to the historical value of each addition. In other words, where the value of the added property has kept on climbing, the incremental element is not captured by the tax calculation.

Are there any other reasons why a well-to-do settlor should consider the possibility of creating a multiplicity of (smaller) settlements rather than just one?

Experience suggests that there may be a number of situations where multiple trusts can be beneficial:

- If a large private company shareholding such as a 76% stake is being settled, it would be worthwhile – on valuation grounds – dividing that asset between, say, four trusts

so that each settlement only holds a minority interest of 19%. The aggregate value of four 19% holdings will be worth far less than a single 76% holding. This will be particularly useful where the shares are not relevant business property. There are no provisions in the IHT code for aggregating values where the same settlor has funded several different trusts from the outset, i.e. there is no equivalent of the related property regime in S161 IHTA 1984. However, might the adviser have to think about submitting a DOTAS report? Presumably this would not be necessary if the settlor had four grandchildren, each of whom was to be the beneficiary of a separate trust.

- Where a decision has been made to settle property, such as shares into different settlements, should all the transfers be made on the same day so that there are related settlements under S62 IHTA 1984 or same-day additions under S62A IHTA 1984? Alternatively, should there be a series of transfers made on different days which will of course mean that the property transferred later in the sequence will have to be aggregated with the settlor's chargeable transfers made earlier in the sequence? There is no set rule, but, in practice (assuming that the shares will continue to grow in value), shares which are eligible for business relief should normally be subject to a series of successive transfers, whereas investment company shares, which are not classified as relevant business property, should be transferred via same-day trusts or additions.
- A non-UK domiciliary who settles property situated outside the UK is establishing an excluded property settlement (S48(3) IHTA 1984). As long as the trust property remains excluded property, it does not matter whether it is comprised in a single settlement or in several. However, if it is possible that the trust might in the future hold UK situs property (e.g. a UK house), there can be advantages in having a number of different settlements, particularly if the settlor has a clean IHT bill of health for the previous seven years. Ownership of the UK house can be split between two or more trusts. Remember that each trust will have its own nil rate band in the event of a 10-year anniversary or exit charge.

- Settling property which qualifies for business relief into multiple trusts is a sensible tax planning step if there is a risk of the settlor dying within seven years and the business property being sold. The replacement property rules in Ss113A and 113B IHTA 1984 require the transferee who sells the business asset to use the entire sale proceeds to purchase replacement business property within a three-year period in order to ensure that the chargeable transfer continues to attract business relief. If the relevant business property is split between, say, two trusts, each trust can decide whether to invest their share of the sale proceeds in further business property or not (as the case may be). This will allow the trustees of Trust 1 to invest in non-business assets (if they wish to) without jeopardising the relief for Trust 2.

Contributed by Robert Jamieson

Exchanges of joint interest in land **(Lecture B1330 – 16.14 minutes)**

When we talk about an exchange of joint interests in land, we are normally considering a situation where two persons who jointly own land exchange interests so each own part of the land outright.

The exchange of interests in land which are jointly owned by two or more persons constitutes a disposal by each owner for capital gains tax purposes and a land transaction for stamp duty land tax purposes. In some cases, the exchange is made simply to rationalise the ownership of the land and to make it easier to manage, with no money changing hands. Any tax charges are very unhelpful.

Capital Gains Tax relief

For exchanges on or after 6 April 2010, legislation is introduced to provide a form of roll-over relief where there are qualifying exchanges of interest. This is found at ss248A – 248E TCGA 1992. This represented the enactment of an extra-statutory concession which had been in place since 1984. The relief has to be claimed.

There are five conditions which have to be met for the relief to apply:

1. A person (which the legislation calls the 'landowner') and one or more other persons (which the legislation calls the 'co-owner') jointly hold either a single holding of land or two or more separate holdings of land;

2. The landowner disposes of an interest in the holding (or one or more of the holdings) to the co-owner or one or more of the co-owners;

3. The consideration for the disposal is or includes an interest in a holding of land held jointly by the landowner and one or more of the co-owners;

4. As a consequence of the disposal, the landowner and each the co-owners become (in the case of a single holding), the sole owner of part of the holding or (in the case of two or more holdings), the sole owner of one or more of the holdings; and

5. The acquired interest is not an interest in excluded land.

It does not matter whether the land is held as joint tenants or tenants in common (or the equivalents in Scotland and Northern Ireland). Spouses and civil partners are treated a single landowner or co-owner for these purposes. The two claims are independent so one party can claim even if the other party does not.

Relief is not available to the extent that the land is 'excluded land'.

Land is 'excluded land' to the extent that it is:

- a dwelling-house or part of a dwelling-house,

- used as the landowner's only or main residence, and

- the private residence relief provisions would prevent all or part of a gain accruing on disposal from being a gain during a 'material time'.

A 'material time' means during a period of six years from the date of the acquisition of the acquired interest.

Where the land was not 'excluded land' at the date of the acquisition but becomes 'excluded land' within 6 years of the acquisition, any chargeable gain accruing on the disposal of the relinquished interest must be re-determined without regard to any relief previously given.

If both of the properties are the main residence of the person who will own them after the exchange and a disposal immediately after the exchange would be fully covered by private residence relief, then the relief is available.

Calculating the relief

The actual impact of claiming the relief will depend on whether the interests are of equal or unequal value. It is the same principle as applies for normal roll-over relief. With roll-over generally you have to consider if the amount reinvested is more or less than the amount of the proceeds. If the amount reinvested is less than the proceeds, then some of the gain comes into charge. Here, it is the same in principle. The difficulty comes from understanding what the consideration for the disposal is and what is the amount being reinvested.

The easy way to think about it is the disposal proceeds (the legislation calls the consideration for the relinquished interest) is the value of the property the landowner receives. The amount reinvested (the legislation calls this the consideration for the acquired interest) is the value of the property the landowner gives away.

The easiest way is to look at some examples.

Equal value interests

The landowner is treated as the consideration received is such that there is no gain/no loss on the disposal. The consideration for the acquisition of the acquired interest is reduced by the excess of the actual consideration for the disposal over the no gain/no loss consideration which the landowner is treated as receiving.

Two individuals jointly own two properties. Both of these are worth £300,000. Property A was acquired for £100,000 and Property B for £50,000. They decide that they want to exchange interests so they each own one property outright. Nick will end up with Property A and Suzie will end up with Property B. The conditions are met for the relief to apply. Effectively each of them is buying half a property worth £150,000 with half of another property worth £150,000.

The gain on property one is £200,000 and the gain on property two is £250,000.

1. Nick's computation

   Consideration for disposal of property B = £300,000 x 50% = £150,000

   Cost of property B = £50,000 x 50% = £25,000

   Gain on property B = £125,000

   Whole of this gain can be rolled over as the amount 'reinvested' is the same as the 'disposal proceeds'. Chargeable gain is therefore nil.

   The allowable expenditure is £25,000 so the amount of consideration to give no gain/no loss is also £25,000.

   The cost of acquisition for Nick of property A is the actual cost (£150,000) less the excess of actual consideration over the no gain/no loss consideration (£150,000 less £25,000) which is £150,000 less £125,000 = £25,000

   Total acquisition cost of property A going forward is £50,000 original cost plus deemed cost here of £25,000 = £75,000

2. Suzie's computation

Consideration for disposal of property A = £300,000 x 50% = £150,000

Cost of property A = £100,000 x 50% = £50,000

Gain on property A = £100,000

Whole of this gain can be rolled over as the amount 'reinvested' is the same as the 'disposal proceeds'.

The allowable expenditure is £50,000 so the amount of consideration to give no gain/no loss is also £50,000.

The cost of acquisition for Suzie of property B is the actual cost (£150,000) less the excess of actual consideration over the no gain/no loss consideration (£150,000 less £50,000) which is £150,000 less £100,000 = £50,000

Total acquisition cost of property B going forward is £25,000 original cost plus deemed cost here of £50,000 = £75,000.

Different value interests

It works exactly the same as described above for the landowner who is acquiring the lower value interest as the amount 'reinvested' is higher than the 'proceeds'. This seems like the wrong way around in some ways as they are acquiring the lower value interest but it is because the disposal proceeds are the value of the property they are acquiring (which is the lower value property). For the landowner acquiring a higher value interest, part of the gain will crystallise as not all of it can be rolled over and the other calculations are consequently altered.

Two individuals jointly own two properties. Property A was acquired for £50,000 and is now worth £300,000. Property B was acquired for £100,000 and is now worth £400,000. They decide that they want to exchange interests so they each own one property outright. Nick will end up with Property A and Suzie will end up with Property B. The conditions are met for the relief to apply.

1. Nick's computation

The consideration for the disposal of property B is the value that Nick is receiving (£150,000) which is less than the cost he is paying for property A which is the value he has given away (£200,000). Full rollover relief is available and the calculation is the same as we saw in the first example.

Consideration for disposal of property B = £300,000 x 50% = £150,000

Cost of property B = £100,000 x 50% = £50,000

Gain on property B = £100,000

Whole of this gain can be rolled over as the amount 'reinvested' is the same as the 'disposal proceeds'. Chargeable gain is therefore nil.

The allowable expenditure is £50,000 so the amount of consideration to give no gain/no loss is also £50,000.

The cost of acquisition for Nick of property A is the actual cost (£200,000) less the excess of actual consideration over the no gain/no loss consideration (£200,000 less £50,000) which is £200,000 less £150,000 = £50,000

Total acquisition cost of property A going forward is £50,000 original cost plus deemed cost here of £25,000 = £75,000

2. Suzie's computation

Consideration for disposal of property A = £400,000 x 50% = £200,000

Cost of property A = £50,000 x 50% = £25,000

Gain on property A = £175,000

As the value of the relinquished interest (the amount received) is greater than the value of the acquired interest (the amount given away), full rollover relief is not available. The 'excess consideration' is £50,000 and the gain is reduced to this amount. Rollover relief of £125,000 is therefore available.

The cost of acquisition for Suzie of this part of property B is the actual cost (£150,000) less the rollover relief (£125,000) = £25,000.

Total acquisition cost of property B going forward is £50,000 original cost plus deemed cost here of £25,000 = £75,000.

If cash is paid to balance up unequal interests, then this is just added to the consideration paid at the relevant point and the calculation worked from there.

Stamp Duty Land Tax

Exchanges of joint interests in land are referred to as 'partitions' in the SDLT provisions. There are special rules such that the share of the land held by the purchaser immediately before the partition does not comprise chargeable consideration.

HMRC have confirmed that the linked transaction rules will not be used to amalgamate the two sides of the transaction.

There is no definition of what constitutes a partition. This was raised during the Standing Committee Debates when the original (FB2003) legislation was being debated. Although this did not result in a statutory definition, the Chief Secretary to the Treasury has explained the definition by way of an example:

'A and B are the joint owners of two properties. They agreed to split ownership, so that A is left as sole owner of one property and B is the sole owner of the other.'

The effect of the legislation is that if no consideration had been paid, notwithstanding the inequality in value, no SDLT would have been payable. It is therefore much more straightforward that the equivalent CGT provisions although you do have to end up with a single owner as you do for CGT purposes (or an owner plus their spouse).

It is important to remember though that assumption of mortgage debt is treated as chargeable consideration so that if you were swapping interests in land where a mortgage is in place, then there might be a charge arising for SDLT purposes. Where the 3% supplement was due to be paid would follow general principles. For example, if you are acquiring an interest in a property which is your main residence and you already hold an interest, then the 3% would not apply even if you hold other property.

Contributed by Ros Martin

Lack of kitchen facilities

Summary – With no proper kitchen facilities and used only by Airbnb guests on a short term basis, the annexe lacked the degree of settled permanence required for it to be treated as a separate dwelling. Multiple dwellings relief was denied.

Alex and Sian Dower bought a property. Having paid the stamp duty land tax due, they later amended the return to claim multiple dwellings relief on the basis that the property comprised a main house and an annexe.

The property was occupied by Airbnb guests on a short-term basis and had an independent lockable entrance, separate connections to utilities and its own boiler. However, the annexe had no kitchen and was not treated separately for council tax, nor did it have its own postal address.

HMRC refused the claim arguing that the property was a single dwelling of which the annexe formed part.

The couple appealed.

Decision

The First Tier Tribunal stated that in the context of stamp duty land tax, a residential property used or suitable for use as a 'dwelling' was to be construed as a building which the occupier could 'inhabit with a degree of settled permanence so as to form the centre of his existence'. It was reasonable therefore to ask whether the second dwelling could be sold separately as a residential property.

The Tribunal commented that the annexe was occupied by Airbnb guests on a short-term basis who might be content to 'make do with the make shift arrangements' but 'to an objective observer, and notwithstanding the nearby shopping amenities, the annexe is not suitable for use as a dwelling by occupants generally, who intend to inhabit the place with a degree of settled permanence, which entails the requirement to have proper facilities to prepare and cook food for daily consumption with sufficient ease and hygiene standards'.

On Airbnb usage, the tribunal said the relevant comparator was hotel accommodation which was categorised as non-residential property. The commonality between a hotel and Airbnb was the temporary nature of the accommodation, whereas a place suitable for use as a dwelling was where 'one lives, regarding and treating it as home'. Such a place was 'undoubtedly suitable for Airbnb usage', but the converse was not inevitably true.

The tribunal said it had 'no difficulty' in concluding that an objective observer would not consider the annexe to be a separate dwelling from the main house.

The taxpayers' appeal was dismissed.

Alex Dower & Sian Louise Dower v HMRC (TC08497)

Adapted from the case summary in Taxation (16 June 2022)

Administration

RTI returns – Does early mean late?

Summary – HMRC has not advised that the early filing of RTI returns was not allowed; indeed, their software allowed it. The employer had a reasonable excuse for filing their RTI returns up to five months early rather than 'on time'.

Quayviews Limited had previously incurred late filing penalties. In an attempt to avoid this happening again, on 4 September 2020 the company submitted RTI returns covering the periods to 5 November 2020, 5 December 2020 and 5 January 2021 early, using HMRCs Basic PAYE Tools software.

HMRC charged late filing penalties of £100 for each return as they had been filed too early. They were treated as not having been filed correctly and in time.

The company appealed.

Decision

The First Tier Tribunal referred to Para. 6C(1) Sch. 55 FA 2009 that states that a penalty is due for a particular month if the employer " fails during a tax month to make a return on or before the filing date".

The Tribunal found that the legislation is specific as to the requirement to file a return during the tax month, the company's early filing meant that it did not make a return during each of the RTI periods being appealed. Consequently, unless they had a reasonable excuse, the company was liable to a penalty.

The Tribunal found that the company did have a reasonable excuse as HMRC had failed to explain why the returns were late.

On more than one occasion, HMRC had advised the company that it had to file returns on or before the payment date but none of HMRC's correspondence stated that RTI returns could not be made more than one month early. Further, without any warning, HMRC's software had permitted the returns to be submitted early.

The appeal was allowed.

Quayviews Limited v HMRC (TC08515)

HMRC information sources (Lecture P1330 – 16.00 minutes)

This session will consider some of the information sources available to HMRC.

'Open source' material

HMRC has issued the following public statement about its use of publicly available information (including social media):

'HMRC may observe, monitor, record and retain internet data which is available to anyone. This is known as 'Open Source' material and includes news report internet sites, Companies House and Land Registry records, blogs and social networking sites where no privacy settings have been applied'.

HMRC may get lifestyle indicators for taxpayers from their social networking sites. There can be a tendency for some people to provide significant details of their lives, including the purchase of assets or luxury holidays, through social media, and that information is available to HMRC if that information is not restricted.

Information powers

Advisers will be familiar with HMRC's extensive information powers, covering first and third parties, as well as their use of informal requests. This can generate information, not only about the taxpayer under enquiry, but also other taxpayers. HMRC's inspection powers can produce the same results. HMRC will consider any such information obtained, and deal with it as considered appropriate.

Informers and informants

Informants have always been a source of information for HMRC. They tend to provide information of varying degrees of quality, from non-specific reports to highly detailed accounts of, for example, fraudulent activity, undeclared business interests, and assets held. HMRC operates a telephone hotline to enable reports of suspected tax evasion to be made. Informants can include disgruntled employees, former business partners and ex-spouses.

In addition to informants, HMRC also use informers. An informer is referred to as a Human Intelligence source (or "Humint"), and is defined in HMRC's manuals, at SIOG2110, as "A person who gives information to the Department relating to a possible criminal offence or regulatory breach (including any offence that may be dealt with under civil provisions)". Any such individuals should be treated as a Covert Human Intelligence Source ("CHIS") under the Regulation of Investigatory Powers Act, depending on the nature and frequency of the contacts with the informer.

In certain circumstances, criminal conduct by the informer can be authorised, providing such conduct is necessary and proportionate, and compatible with obligations under the European Convention on Human Rights.

The international angle

HMRC's information sources are not restricted to the domestic arena. The international dimension includes FATCA (The Foreign Account Tax Compliance Act), a US initiative, and the Common Reporting Standard ("CRS"). The CRS is a global standard for the automatic exchange of information regarding financial accounts.

In addition to the formal exchange of information, HMRC has benefitted from various data leaks over the last ten or so years, including from HSBC, Geneva, and LGT, Liechtenstein.

Other sources

These include:

- HMRC investigations
- Comparison with other businesses
- Online marketplaces (ebay, etc)
- Credit card data
- Bank accounts
- Traditional media
- Suspicious Activity Reports

Joining the dots

There is not any point in HMRC having significant volumes of information, if it cannot be used. In 2010, HMRC introduced a computer program, "Connect", which enables the tax authority to analyse data held. The software can analyse seemingly disparate and unrelated pieces of information. A key advantage for HMRC is that Connect enables the quicker processing of data, and permits analysis that may previously have taken much longer, or may not have been possible.

What does HMRC do with the information?

The information held by HMRC can be used to risk-assess taxpayers, and determine which cases will be investigated, whether by its civil or criminal powers.

Where permitted, HMRC will share its information with other bodies, including other government departments, overseas tax authorities, the police and the courts.

Practical considerations

It is all very well for advisers to know the extent of HMRC's information sources, but there are important practical considerations.

Advisers should treat any tax enquiry or intervention (including nudge letters) seriously, and consider whether HMRC has information beyond that supplied by the client. It may be appropriate, where a client is reluctant to talk about any potential issues, to discuss HMRC's varied and extensive information sources, particularly in relation to HMRC's monitoring of social media. It may be helpful to review a client's website, and ask them to consider whether there is any misleading or incorrect information – is all the information up-to-date? An internet search of the client's name and their business may provide an indication of information that an HMRC officer has researched.

Contributed by Phil Berwick, Director at Berwick Tax

Deadlines

1 August 2022

- Corporation tax for periods to 31 October 2021 if not liable to pay by instalments
- 2020/21 Self Assessment returns subject to a penalty – higher of £300/5% of tax due

2 August 2022

- Filing date for form P46(Car) for quarter ended 5 July 2022

5 August 2022

- Quarterly report by employment intermediaries for period 6 April to 5 July 2022

7 August 2022

- Due date for VAT return and payment for 30 June 2022 quarter (electronic).

14 August 2022

- Quarterly corporation tax instalment payment for large companies
- File paper monthly EC sales list –businesses based in Northern Ireland selling goods

19 August 2022

- Pay PAYE/CIS for month ended 5 August 2022 if by cheque
- File monthly CIS return

21 August 2022

- File online monthly EC sales list – Northern Ireland businesses selling goods
- Supplementary intrastat declarations for July 2022
  - arrivals only for a GB business
  - arrivals and despatch for a business in Northern Ireland

22 August 2022

- PAYE/National Insurance/student loan payments if paid online

31 August 2022

- File accounts of:
  - private companies with 30 November 2021 year end
  - public limited companies with 28 February 2022 year end
- Corporate tax self-assessment returns for accounting periods ended 31 August 2022.
- Annual adjustment for VAT partial exemption claims, May year end.

News

MTD for income tax – The latest consultations (Lecture B1327 – 15.04 minutes)

This article considers the latest consultations relating to Making Tax Digital for income tax, which cover the draft Notices issued under the Regulations.

New Schedule A1 TMA 1970

The primary legislation was introduced by Finance (No 2) Act 2017. A new Schedule A1 was inserted into the Taxes Management Act 1970, which deals with all of the digital requirements for income tax.

The new Schedule requires that taxpayers who are mandated into MTD for income tax must file periodic updates electronically that include specified information. The exact information with be specified by Regulations but can include:

"Any information relevant to calculating the profit, loss or income including information about receipts and payments"

The Regulations will specify the frequency of these returns but this cannot be more often than once every three months.

The other main document that Schedule A1 refers to is the End of period statement which is made for the basis period. As a result of the basis period review, this means that basis periods will have to be for the tax year.

Changes to TMA 1970

In summary, changes to TMA 1970 did the following:

- Section 8 of the Act was reworded. Where previously taxpayers were required to 'File a return', this has been amended to read 'File information'. Going forward, once MTD for income tax kicks in, taxpayers will be required to complete a new style return and file information relating to non- MTD income. So everything other than property and trading income.

- Taxpayers with property and trading income must keep digital records, make periodic submissions and submit an End of Period statement.

Secondary legislation

This was released in September 2021 and contains most of the detailed rules although some content has been deferred to 'Notices'.

Remember the appointed day when MTD for income tax goes live is 6 April 2024.

These Regulations do not apply to partnerships. These will come later from around 2025.

The Regulations cover:

- The digital requirements';
- The digital start date;
- The content and timing of the digital records;
- When quarterly updates must be made and what they must include;
- When End of Period statements must be made and what they must include;
- Information about digital exclusion and other exemptions.

Digital requirements

There are three requirements:

1. Record digital records and preserve them for the required period;
2. Provide quarterly updates;
3. Provide an end of period statement (EOPS).

This must be achieved using functional compatible software, which will be defined by a Notice.

Basis of draft Notices

The Notices are being referred to as the Tertiary legislation and will be mandatory.

The Regulations state that certain information is to be 'specified in a Notice issued under this Regulation'. The notices are therefore (hopefully) the final bit of the jigsaw

Draft Notices have now been issued and are open for comment. These can be found by searching 'MTD draft Notices' and they contain some very important content.

In the rest of this session, we will cover the content of the draft Notices, with the exception of the EOPS. This will be covered in a separate article that follows.

Software Notice

This is made under Regulation 3 and is 'a general direction given by the Commissioners which is stated to be given further to this regulation and specifies conditions with which functional compatible software must comply'.

Once a transaction has been recorded using functional compatible software, transfer, or modification of that digital record must happen digitally and not manually. In other words, no re-keying. Cutting and pasting is not allowed but when using Excel relative cell referencing is acceptable.

Update Notice

This is made under Regulation 8 and covers the quarterly update.

"Update notice" means a notice made by the Commissioners which is stated to be made further to this regulation and which specifies update information to be provided to HMRC."

This section lists the content of the quarterly update and It specifies different information for trades and property businesses. The Regulations states that digital records must have a date, a category that complies with the categories listed in the Update Notice. Clearly it must also have a value.

The Update Notice is what is going to give us our Chart of accounts for the analysis of transactions. These exactly match the SA103 headings for a trade and SA105 for property income. Furnished holiday let income is a separate data set but part of this submission. Foreign property income is a separate submission with sections, so separately listing EEA lets and other lettings.

Turnover below £85,000

For both property and trading income separately below £85,000 (gross), the option is still given by Self Assessment to use the three-line account . This means that the analysis will simply be 'Total income less total expenses'.

Does this mean that we don't need digital records listing out the various categories of expenditure as they will not be reported separately? The answer to this question is not 100% clear but is does seem likely. If HMRC allow this, they could see a huge uptake by sole traders, resulting in information available to HMRC being significantly less than before MTD for income was introduced. Maybe there would be an additional requirement to keep manual records with more detail?

Retail Sales Notice

This Notice covers record keeping for retailers and allows the use of daily sales figures rather than every transaction.

However, at the moment, retailers are not defined.

Article created from the lecture by Rebecca Benneyworth

MTD for income tax – End of period statement (Lecture B1328 – 13.54 minutes)

Primary legislation

Under Schedule A1 TMA 1970, an end of period statement (EOPS) is required for each tax year. This legislation also states that the due date for uploading the statement is by 31 January after the end of the fiscal year.

An EOPS will be required for each separate trade as well as up to two property related statements for UK and overseas property.

The legislation states that:

- end of period information will be specified in an end of period Notice
- it will include information relevant to calculating profits, losses or income for the business …. including information about receipts and payments.

The EOPS will include a declaration confirming that it is correct and complete.

The Regulations

EOPS within the Regulations is found at Part 4 of Regs (11 – 14)

The declaration is confirmed as– 'the information contained … is correct and complete to the best of that person's knowledge'.

The content within the Regulations is fairly brief but is to specified in more detail by the EOPS Notice.

The Regulations specify that we must have:

- Designatory information (probably the name, UTR and NI number);
- The period to which the statement relates;
- The totals of the specified categories (although the categories have yet to be confirmed);
- A list of the properties for a property business; and
- Information about balancing charges, adjustments, allowances, losses, exemptions and reliefs.

Draft Notice on EOPS

The draft Notice was issued in July 2022.

The Notice requires the totals of amounts falling within the applicable categories of transactions detailed in the Update Notice (as described in the previous article).

Additional information is then required as detailed below.

For trades

- Capital allowances split between :
  - AIA
  - main pool allowances
  - special rate pool allowances
  - single asset pool allowances
  - 0% emissions vehicle allowances

  - Premises renovation allowance
  - other enhanced allowances
  - allowances on sale or change of use of assets
  - balancing charges on Premises Renovation allowance
  - balancing charge on sales of other assets or cessation of use
  - Zero emissions car allowance
  - electric charge point allowance
  - Structures and buildings allowance
  - Freeports enhanced SBA

- Adjustments for change of accounting practice between cash basis and full accounting standard basis
- Averaging adjustment for farmers or creative artists;
- Adjusted profit or loss for the year;
- Adjustment to profits chargeable to Class 4 NIC.

It appears that at present that they have forgotten relief for trade losses brought forward and carried forward.as well as a box for transitional overlap relief which will be spread forward in the changed of basis period.

For UK property (not furnished holiday lets (FHL))

- Capital allowances split between:
  - AIA
  - 0% emissions vehicle allowances
  - Premises renovation allowance
  - other capital allowances
  - Zero emissions car allowance
  - Electric charge point allowance
  - Structures and buildings allowance
  - Freeports enhanced SBA;
- Private use adjustment;
- Balancing charges;
- Cost of replacing domestic items;
- Rent a room exempt amount;
- Loss brought forward used against this year profits;

- Property Income allowance;
- Adjusted profit or loss for the year.

Overseas Property (not FHL)

- Capital allowances split between:
  - allowances for equipment and vehicles
  - Zero emissions goods vehicle allowance
- Private use adjustment;
- Balancing charges;
- Cost of replacing domestic items;
- Adjusted profit or loss for the year.

UK FHL

- Capital allowances;
- Balancing charges;
- Private use adjustment;
- Adjusted profit or loss for the year.

EEA FHL

- Capital allowances;
- Balancing charges;
- Private use adjustment;
- Adjusted profit or loss for the year.

In summary there will be an EOPS for:

- UK property income which will cover both non FHL and FHL;
- Overseas property which will cover non FHL and FHL for EEA properties.

Gross income below £85,000

- The analysis of income and expenses can be replaced by a single figure for income and a single figure for expenses
- This replicates the similar easement for quarterly submissions
- It is available in respect of trades and the two property businesses

- But the other EOPS content above must be provided

HMRC and the IT specification refers to the EOPS as a 'tick box process' so that the taxpayer will simply click a yes box to say it is correct. The software simply plays back what has been previously submitted and asks 'Have you finished?' It takes you from the sum of the 4 quarterly submissions to the final profit or loss for the year. If you have not finished, you may need to make some adjustments:

- Correcting transactions that have been omitted, duplicated or put in the wrong place;
- Making accounting adjustments for accruals, prepayments, closing stock etc.
- Making tax adjustments

The final EOPS is the equivalent of SA103 / SA105.

Contributed by Rebecca Benneyworth

Implementation of global corporation tax rate delayed

Draft legislation will be published in the summer to implement the Organisation for Economic Cooperation and Development's (OECD's) pillar 2 framework in the UK, the financial secretary to the Treasury has confirmed. But the commencement date will be pushed back from 1 April 2023 to 31 December 2023.

The government said it continues to support the efforts underway through the G20/OECD inclusive framework to address the tax challenges arising from globalisation and the digitalisation of the economy and to adopt a global minimum tax.

The Treasury received more than 50 responses to the consultation – which is now closed – on how the pillar 2 rules will be implemented in domestic legislation. The responses will be published with the draft legislation in the summer

One of the points raised most consistently in the responses was the need for adequate lead-in time before the rules are implemented in the UK. This is because of the complexity of the rules, the fact that important policy and administrative issues are still being discussed within the OECD implementation framework, and the need for businesses to build systems to be able to ensure rule compliance.

Respondents were concerned that implementing the rules from spring 2023, ahead of the likely implementation date in other countries, would compromise the long-term success and sustainability of the regime and put UK businesses at a competitive and administrative disadvantage.

As a result, the government will confirm in the summer update that the UK pillar 2 legislation will first apply to accounting periods beginning on or after 31 December 2023.

HM Treasury OECD pillar 2 consultation

Taxation (23 June 2022)

Business Taxation

Alleged suppression of takings (Lecture B1326 – 15.23 minutes)

Summary – With no loss of tax due to deliberate or careless behaviour, discovery assessments imposing almost £300,000 in tax were not valid. Till receipts used to form the assessments using the presumption of continuity were artificially increased to achieve a higher sale price for the potential sale of the business.

Ruhal Islam operated a fast food takeaway business as a sole trader from leased premises.

He had acquired four tills as part of the business purchase but initially, only used Tills 1 and 2 to run his business. Till 1 was used to record all sales, while the printout from Till 2 was used to give orders to the chef. That was the system used by the previous owner. From 2012, Till 1 was not working reliably and so it was replaced by Till 3.

In 2015, with the business struggling, Ruhal Islam unsuccessfully tried to sell the business. Following this, in an attempt to find a buyer, he asked his wife to produce inflated till receipts using the old Till 1, which she did for the period November 2015 to January 2016.

In 2017, HMRC opened an enquiry in his 2015/16 tax returns and at a visit to the business premises, was given till rolls covering the period from April 2015 to April 2016. This included the fictitious till rolls which had not been reported in the business accounts.

In 2018, new officers took over and visited the premises unannounced. Not long after, HMRC issued discovery on the basis that sales had been suppressed. HMRC used the presumption of continuity to extrapolate the inflated sales for seven years from 2007/08 to 2016/17. The total tax due was nearly £300,000

Ruhal Islam appealed.

Decision

The First Tier Tribunal found that Ruhal Islam was uncooperative and produced conflicting evidence. However, the burden of proof was on HMRC to prove that there was a loss of tax due to deliberate or careless behaviour. They produced little evidence to support their case.

The Tribunal concluded that it was Ruhal Islam's wife who had fabricated the till receipts but that HMRC had not sought to clarify the significant differences between the two sets of figures. The Tribunal also questioned the significance of the short period of increased sales by comparison to the time to which the presumption of continuity was applied.

The appeal was allowed.

Ruhal Islam v HMRC (TC08513)

Dual invoicing by supplier (Lecture B1326 – 15.23 minutes)

Summary – Suppressed purchases meant that the company had understated turnover and profit for both VAT and direct tax purposes.

Jin Fu Chinese Takeaway Limited ran a Chinese takeaway business that operated on a cash only basis.

In April 2015, HMRC undertook a VAT visit to one of the company's suppliers, AMB Foods and established that some of the supplier's customers, including Jin Fu Chinese Takeaway Limited, operated two accounts with the supplier.

On further investigation, it appeared that that only purchases made on one of the accounts had been declared by Jin Fu Chinese Takeaway Limited. HMRC concluded that the only reason to suppress purchases was to suppress the corresponding sales.

Consequently, HMRC used the company's recorded gross profit rate to compute the additional sales which would have come from those purchases. HMRC treated the omitted takings as a loan or advance to the director.

Jin Fu Chinese Takeaway Limited appealed

Decision

With HMRC having made a valid case that the returns were incorrect, the burden of proof moved to Jin Fu Chinese Takeaway Limited to show why HMRC's assessments were wrong. The company had failed to do so.

Following their usual practice, HMRC had correctly treated the additional takings as a loan to the director. The Tribunal dismissed the company's request to treat the sum as a distribution.

The First Tier Tribunal upheld the assessments and penalties.

Jin Fu Chinese Takeaway Limited v HMRC (TC08516)

Property transactions not trading

Summary – In 2008/09, the taxpayer's activities carried on did not constitute a trade.

Foundation Partners (GP) was a general partnership, established through an arrangement set up by Future Capital Partners, to form a vehicle for a property development in Montenegro.

Losses of over £36 million were recorded in the partnership tax return for 2008/09, created on an accounting write down of stock in the partnership.

HMRC issued a closure notice denying the entirety of this partnership trading loss.

The First Tier Tribunal had dismissed the partnership's appeal, finding that it was not trading. The artificiality and lack of commerciality in the contracts entered into by Foundation Partnership (GP) showed that it did not have a 'commercial character' such that no

reasonable trader would enter into them. The Tribunal also concluded that the arrangements were 'so distorted by tax considerations, that they break down as a credible trading proposition'.

Decision

The Upper Tribunal found no reason to disturb the First Tier Tribunal's finding of fact that Foundation Partnership (GP) was not trading in 2008/09.

The Upper Tribunal decided that 'there is no error of law in the FTT's decision that the absence of commerciality was a factor of considerable weight'.

Furthermore, having found the partnership's arrangements to be 'uncommercial from the "get go" and that the uncommerciality arose from arrangements designed to provide investors with sideways loss relief, there was a rational basis for the First Tier Tribunal's conclusion that the principle in Lupton applied'.

Foundation Partners (GP) v HRC [2022] UKUT 00167 (TCC)

Adapted from the case summary in Tax Journal (8 July 2022)

CFC exemption was state aid

Summary – The General Court of the EU confirmed that the CFC group financing exemption constituted state aid.

The European Commission ruled that the UK's controlled foreign companies (CFC) group financing exemption (TIOPA 2010, Pt 9A Ch 9) constituted state aid to the extent that it applied to non-trading finance profits from qualifying loans where the decision-making functions were in the UK (TIOPA 2010, s 371EB). The exemption was not state aid where the profits arose from UK funds or assets (s 371EC) and s.371EB did not apply.

The UK government and ITV plc applied to the General Court of the EU to annul the commission's decision.

Decision

The General Court of the EU held that the commission had not made any errors in concluding that the exemption provided a selective advantage, since it introduced a difference in treatment between companies in a comparable situation.

In particular, the judges said there was a difference in treatment between CFCs making qualifying loans to non-UK companies and those making 'upstream loans' to UK companies which did not qualify for the exemption. In both cases, there was an artificial diversion of profits from the transfer of funds to the CFC, and the CFC's profits would be repatriated to the UK in the form of non-taxable dividends.

On whether there was a justification for the exemption, the court ruled that the UK had not provided any evidence to quantify the administrative costs that would be involved in identifying the decision-making functions in the context of intra-group loans

Further, the court disagreed with the UK's argument that the exemption was justified in that it was aimed at compliance with freedom of establishment.

The applications were dismissed.

UK and ITV plc v European Commission (Cases T-363/19 and T-456/19), General Court of the European Union, 8 June 2022

Adapted from the case summary in Taxation (23 June 2022)

Land remediation relief denied

Summary - Pumping gas through old pipelines by the company had contributed to the contamination, meaning that Land Remediation Relief was not available.

Northern Gas Networks Ltd owned and operated a regional UK gas distribution network, acquired in 2005 following a hive-down from its former parent company. Constructed of iron, the pipes are liable to corrode and fracture through time. Consequently, gas distribution companies are required to replace or improve "at risk" mains pipelines located within 30 metres of a building over a 30-year period.

Following its acquisition of the network in 2005, Northern Gas Networks Ltd had replaced certain of its iron pipes with high density polyethylene pipes or by lining existing iron pipes with high density polyethylene pipes. The company had claimed the 150% Land Remediation Relief on expenditure relating to the replacement or lining of pipes totalling over £100 million.

It was agreed that relief would be available provided that six conditions were met:

1. The land was in the UK;
2. The land was acquired for the purposes of the company's trade;
3. All or part of the land was contaminated at acquisition;
4. The company had incurred qualifying remediation expenditure relating to the land;
5. That expenditure was an allowable trading deduction;
6. The land must not have been in a contaminated state wholly or partly as a result of anything done or omitted to be done by the company.

HMRC disallowed the Land Remediation Relief claim. Both First Tier and Upper Tribunals concluded that conditions four and six were not met. As the expenditure at issue exceeded £100 million and the issue was also relevant to other utility providers, the Upper Tribunal granted permission to appeal to the Court of Appeal.

Decision

The Court of Appeal considered condition six first, finding that the iron pipes alone did not give rise to any contamination. The possibility of contamination only arose because Northern Gas Networks Ltd pumped gas through these pipes. It was an act carried out by the company that gave rise to, or caused contamination, meaning that condition six was not met and so Land remediation Relief was not available.

With one of the six conditions not satisfied, the Court did not consider any of the other conditions and the appeal was dismissed.

Northern Gas Networks Ltd v HMRC [2022] EWCA Civ 910

VAT and indirect taxes

Online advertising costs (Lecture B1326 – 15.23 minutes)

Summary – Pay Per Click advertising through Google had a direct and immediate link to the sale of sofas and did not relate to exempt insurance intermediary commission.

Sofology Limited and DFS Furniture Company Limited are retailers that sell sofas and other furniture online, in-store and by phone.

The companies also supply intermediary services in relation to sofa insurance. This insurance is provided to the customer by a third party. In return for the customer introduction to the third party, the relevant insurance company pays a commission to Sofology Limited and DFS Furniture Company Limited

Back in 2009, in DFS Furniture Company Ltd v HMRC [2009] UKFTT 2004, the First Tier Tribunal had ruled that advertising through traditional media including television adverts, posters, booklets and direct mailing literature was directly attributable to its taxable supplies of sofas and not to its exempt insurance intermediary services. All of the related advertising related input tax was therefore recoverable.

The question in this latest case was whether Pay Per Click advertising via Google was any different. Unsurprisingly, both Sofology Limited and DFS Furniture Company Limited thought not but HMRC disagreed, arguing that the box 4 input tax entry should have been restricted under the partial exemption rules. HMRC issued assessments disallowing input tax on the basis that it was residual for partial exemption purposes.

The companies appealed.

Decision

The First Tier Tribunal found that both companies incurred the Pay Per Click advertising costs in order to promote its sofa sales. The aim of the advertising was to encourage customers to access the companies' websites and entice them to buy a sofa. The advertising was not directed at selling insurance. Indeed, a customer could only buy insurance once they had purchased a sofa. There was only an indirect link between the online advertising and the supply of insurance intermediary services.

The Tribunal also disagreed with HMRC's alternative argument that the costs should be treated as an overhead. The Tribunal stated that the allocation of the costs to 'overheads' should be considered a last resort that should only be used where it was not possible to identify a supply with which these costs had a direct and immediate link. This was not the case here as there was a direct link between the advertising costs and the sofa sales.

The appeal was allowed.

Sofology Limited and DFS Furniture Company Limited v HMRC (TC 08480)

Council sport and leisure facilities (Lecture B1326 – 15.23 minutes)

Summary – As a public authority, Chelmsford City Council was able to recover VAT under the special VAT refund provisions

This case was designated a "lead case" and concerned the VAT treatment of sports and leisure facilities provided by Chelmsford City Council which included swimming, ice skating, various racquet and team sports, gym and exercise classes, athletics and children's soft play. Apart from the gym facilities, offered on a membership basis, the services were "pay for play." Price concessions existed for various categories of users.

Chelmsford City Council claimed a repayment of VAT allegedly overpaid totalling £900,000.

HMRC argued that the council was a taxable person, meaning that VAT should be charged on admission fees.

Agreeing with the council, the First Tier Tribunal had found that Chelmsford City was acting as a public authority under Article 13(1) of the Principal VAT Directive 2006/112/EC. This meant that the services were provided under a "special legal regime" which applies only to public authorities, and not to private operators. Article 13(1) reads:

> "States, regional and local government authorities and other bodies governed by public law shall not be regarded as taxable persons in respect of the activities or transactions in which they engage as public authorities, even where they collect dues, fees, contributions or payments in connection with those activities or transactions."

HMRC appealed to the Upper Tribunal.

Decision

The Upper Tribunal found that Chelmsford City Council, as a public authority, was subject to legal obligations that did not apply to private sector operators.

The authority was obliged to consider how their facilities promoted social inclusion and helped to prevent crime. The council were obliged to consider its statutory obligations under the Crime and Disorder Act 1998 as well as the Local Government Act 2000. No private operator would be obliged to run leisure facilities in this way. This was enough to decide the case in Chelmsford City Council's favour. Chelmsford City Council could recover VAT on costs incurred under the special VAT refund provisions (s.33 VATA 1994).

HMRC's appeal was dismissed.

Although not needed, the Upper Tribunal considered the VAT exemption for sports and leisure admission fees charged by 'eligible bodies' (Sch.9 Group 10 Item 3 VATA 1994). The Tribunal noted that under note 3 of item 3, a local authority was not an eligible body meaning that under this provision, the VAT exemption would not have been available.

HMRC v Chelmsford City Council [2022] UKUT 00149 (TCC)

Adapted from the case summary in Taxation (30 June 2022)

Option to tax - Change to process (Lecture B1326 – 15.23 minutes)

HMRC are trialling a new process in an attempt to speed up their review process by increasing internal efficiency, while maintaining their legislative and security obligations.

"As is" process

Currently, when a customer notifies of an intention to Opt to Tax a property using Form VAT 1614A, HMRC acknowledge the notification and then carry out certain checks on the notification.

Section 4.2.4 of VAT Notice 742A states that HMRC will normally acknowledge receipt of notification, although this is not necessary for the option to tax to have legal effect.

Process during the trial

HMRC will continue to acknowledge receipt of notification but will no longer acknowledge its validity - this is the responsibility of the opter themselves.

The option to tax acknowledgement letter issued by HMRC will become an acknowledgement of a receipt of the option to tax from the customer.