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Personal tax

CJRS scheme – follow the rules (Lecture P1466 – 15 58 minutes)

Summary – As variable rate employees, the reference salary used to calculate CJRS entitlement could not be increased and further, credits were not available where the company had claimed less than it was entitled to.

Lucky Eyes Limited was a qualifying employer for the purposes of the CJRS and made claims totalling £40,250 under the scheme in respect of payments made to five furloughed employees.

The company made monthly claims between May 2020 and September 2021. Two employees retired towards the end of 2020, and while no further claims were made in respect of these employees, the salary used for claims relating to two of the other employees increased after January 2021, as they took on the retirees' work. Overall, the company's claims did not change significantly.

There was no evidence of any contracts between Lucky Eyes Limited and its employees stating that they were entitled to an "annual salary".

Later, HMRC issued assessments in respect of the two tax years affected, to collect what were considered to be excess payments under the CJRS scheme.

The company appealed to the First Tier Tribunal arguing that the policy objective of the CJRS was to support businesses through the pandemic and that the claims should be allowed on the increased salaries of the two employees who took on additional work after their colleagues had retired. The level of support offered to Lucky Eyes under the CJRS was not materially increased in overall terms as a result of this change.

A second issue arose in the course of the hearing, which was whether appropriate credit had been given in HMRC's computation for cases where Lucky Eyes Limited had claimed an amount which was less than the amount to which it was entitled. The company sought to set off those amounts against overclaims in other months. HMRC argued that credit could be given within a monthly claim but not by setting an amount underclaimed in one month against an amount overclaimed in another.

Decision

On the first issue, it did not matter that the company's activity level and over claim was broadly the same before and after the two of the employees retired. What mattered was whether the employees who were eligible for the CJRS payments were paid as "fixed rate employees" or "variable rate employees", which then determined the employees "reference salary" for CJRS purposes.

With no evidence provided to prove that under their "contract" they were paid an annual salary, HMRC were correct that each employee's reference salary was determined by reference to the rules for variable rate employees. For such employees, the CJRS did not allow any increase in the reference salary to reflect increased payments made by the company after March 2020.

The First Tier Tribunal did sympathise with the company's set off argument but found that the legislation required each month to be considered independently and no set off was allowed.

The appeal was dismissed.

Lucky Eyes Limited v HMRC (TC09298)

'Host employer' provisions (Lecture P1466 – 15 58 minutes)

Summary – Aramark Limited was liable to account for employer's NIC under the 'host employer' provisions, as the company exercised day-to-day control of the workers.

Aramark Limited was a UK company which was part of a group headed by a US corporation. It provided catering and hospitality services to offshore installations in the North Sea and, as part of its contracts, was required to supply personnel, goods and equipment including food and housekeeping materials. From 2004, it did this using resources supplied to it by a non-UK group member, Aramark US Offshore Services LLC. Under the agreement between the two entities, the employees it had used previously were transferred to the offshore entity, with the intention being to eliminate the cost of secondary class 1 National Insurance.

HMRC considered that the taxpayer was liable to Class 1 National Insurance by virtue of the host employer provisions in Social Security (Categorisation of Earners) Regulations SI 1978/1689, Sch 3 para 9 (as they applied before 6 April 2014).

Decision

The First Tier Tribunal stated the purpose of the host employer provisions was to impose a secondary National Insurance liability where the host 'stands in the shoes of an employer in terms of the substantive day-to-day control of a worker and where that worker is working in the host's business but contractually employed by a foreign employer'. This would 'catch' those who artificially sought to place contractual employment outside Great Britain without affecting the daily operations of the workers.

The First Tier Tribunal stated that day-to-day control was not the same as the 'ultimate control' needed to establish an employment relationship. If it were the same test, the host employer would be the actual employer and the host employer provisions would be 'irrelevant'.

Here, the First Tier Tribunal concluded that the offshore entity, while not a 'sham', was 'little more than a contractual shell'. Its decisions were limited to human resource and some financial decisions taken on the basis of recommendations by the taxpayer. It did not exercise any substantive day-to-day control over the workers – for example, it did not supervise their work. Instead, this was done by a unit manager by reference to procedures set out in the taxpayer's offshore operating manual.

The First Tier Tribunal found that Aramark Limited exercised day-to-day control of the workers. The class 1 secondary National Insurance was therefore payable.

The appeal was dismissed.

Aramark Limited v HMRC (TC09290)

Adapted from the case summary in Taxation (3 October 2024)

Employment related securities guidance updated

HMRC have updated guidance in their *Employment Related Securities Manual* to take into account the Supreme Court's decision in *Vermilion* [2023] UKSC 37 on the application of the deeming provision within s.471(3) ITEPA 2003). The Supreme Court held that the deeming provision created a 'bright line' rule, with no general purpose-based let out.

HMRC's revised guidance at ERSM20215 states:

> 'If the right or opportunity to acquire a securities option is made available by a person's employer, or a person connected with a person's employer, then it is an ERS option, regardless of the reason for doing so.
>
> Where a company makes a rights issue or issues warrants to its shareholders and a shareholder is an employee of the company, this is also covered by the deeming provision and reported in accordance with the ERS reporting obligations.'

HMRC's guidance also states:

> 'The principles established in this case also apply where [ITEPA 2003 s 421B (3)], the “deeming provision” applies in respect of the acquisition of securities under [ITEPA 2003 s 421B], so there is no need to consider causation under [ITEPA 2003 s 421B(1)]. The shares/securities are deemed to be acquired by reason of employment and are within scope of the ERS provisions'.

Adapted from Tax Journal (18 October 2024)

Dividends due and payable **(Lecture P1466 – 15 58 minutes)**

Summary - An interim dividend was 'paid' for income tax purposes in 2016/17 when it was received by the shareholder, at a time when he was non-UK resident.

Peter and Nicholas Gould were the principal shareholders and directors in Regis Group (Holdings) Limited, with the remaining shares held by a family settlement of which they were joint life tenants.

The company had expanded its business from the UK to the United States, establishing an office in Dallas. While Nicholas Gould remained resident in the UK, Peter Gould worked in the United States and in 2015, having been living in Jamaica, he relocated, buying the property that he had been renting. He remained tax resident in the UK in 2015/16 but by 2016/17 was non-UK resident.

With surplus cash from property disposals on 31 March 2016 the board of directors resolved to pay an interim dividend of £40 million, with £20 million being payable to each of the brothers as result of the trustees of the settlement directing the company to pay its share directly to the brothers.

Nicholas Gould received his dividend on 5 April 2016 and so was taxable in 2015/16, so avoiding the increased dividend tax rate in 2016/17.

Peter Gould received his dividend on 16 December 2016, which he claimed fell into 2016/17, when he was non-UK resident and therefore, in his mind, not subject to UK tax.

Following an enquiry, HMRC issued a closure notice on the basis that Peter Gould's interim dividend was taxable in 2015/16, at the same time as his brother. HMRC argued that:

- A dividend is taxable in the tax year in which it becomes a debt that is due and payable;
- The company's articles of association required shareholders holding the same class of shares to be treated equally. This meant that once the company had paid the dividend to his brother, the company became indebted to pay the dividend to Peter Gould, who could enforce that debt immediately.

The First Tier Tribunal found in Peter Gould's favour, finding that the principle of equal treatment of shareholders contained in the articles did not give Peter Gould an enforceable debt in 2015/16.

In case they were wrong, the Tribunal went on to accept the alternative arguments that had been raised by the taxpayer in the event that an enforceable debt had been created:

- The principle in *re Duomatic Limited* [1969] 2 Ch 365 was engaged. All the shareholders had agreed to vary the articles of association so that the directors were permitted to pay dividends at different times without creating a debt;
- Prior to the directors resolving to pay the interim dividend, Peter Gould waived his right to enforce payment of the dividend when the dividend was paid to his brother. That waiver was supported by consideration and was therefore binding on Peter Gould and the company.

HMRC appealed to the Upper Tribunal.

Decision

The Upper Tribunal found that the First Tier Tribunal had erred in law as Peter Gould did have an enforceable debt when Regis paid the dividend to his brother in 2015/16.

However, the Upper Tribunal found that this was not a material error in law as there was an informal agreement between the shareholders, meaning that the principle in re Duomatic Limited [1969] 2 Ch 365 was engaged. All the shareholders had agreed to vary the articles of association so that the directors were permitted to pay dividends at different times without creating an enforceable debt

The First Tier Tribunal had also been entitled to find that Peter Gould's waiver of the right to enforce the debt was agreed before the directors resolved to pay the interim dividend. He agreed to waive his right to enforce payment of a dividend until after 5 April 2016 provided the company agreed to pay the interim dividend.

The appeal was dismissed.

HMRC v Peter Gould [2024] UKUT 00285 (TCC)

Income from renting out land or property

On 24 October 2024, HMRC published new guidance for taxpayers on how to check if they need to tell HMRC about rental income. This guidance includes a new online tool.

The guidance highlights sources of rental income where an individual may need to inform HMRC even if they do not need to pay tax on it.

This includes renting out land or property through an:

- online marketplace;
- estate agent;
- advert in the newspaper.

HMRC state that the online tool can be used to check if income needs reporting when the individual receives income from renting out:

- a room in their main home, including as a bed and breakfast;
- their main home;
- a property that is not their main home;
- land, for example their driveway.

However, the tool cannot be used if the individual is adopting the furnished holiday letting rules.

The tool can also be used to check if there is a need to tell HMRC about income from selling goods, personal possessions or providing a service.

https://www.gov.uk/guidance/check-if-you-need-to-tell-hmrc-about-your-rental-income

Fixed protection 2014 revoked **(Lecture P1466 – 15 58 minutes)**

Summary – The pension contribution made by the taxpayer's former employer after the cut-off date for Fixed Protection, meant that HMRC had correctly revoked their Fixed Protection 2014 certificate.

Steven Lefort intended to retire on 30 December 2013 but his employment was extended to 28 February 2014. He made his final employee contribution to his self-invested personal pension (SIPP) on 14 March 2014.

He obtained a fixed protection 2014 certificate in respect of the pension lifetime allowance, granting him protection from 6 April 2014.

However, his employer made its final contribution to his SIPP on 5 May 2014 – after the cut-off date of 5 April 2014 and, as a result, HMRC revoked the fixed protection 2014 certificate.

Steven Lefort appealed claiming he had no control over the payment made by his employer and that HMRC should have exercised discretion in his favour.

Decision

The First Tier Tribunal considered the evidence in detail and concluded that the employer's contribution was made after the deadline and that it remained in his SIPP. Consequently, HMRC was correct to revoke the certificate.

Steven Lefort also asked the First Tier Tribunal to make a rescission order on the basis the contribution had been made by mistake. Agreeing with HMRC, had such an error been made, it was for the employer to bring and there was no evidence that it planned to do so. In any event, the First Tier Tribunal did not have jurisdiction to grant rescission; that was for the High Court or Upper Tribunal.

The appeal was dismissed.

Steven Anthony Lefort v HMRC (TC09322)

Adapted from the case summary in Taxation 31 October

Capital taxes

Exit tax legislation and EU law (Lecture P1467 – 15.38 minutes)

Summary – When the taxpayers moved their tax residence abroad, the First Tier Tribunal was able to use a 'conforming interpretation' of UK law to retrospectively insert a five-year payment deferral rule, so making the exit charges lawful under EU law and its principle of 'freedom of establishment'.

In this appeal, the Upper Tribunal considered two joined appeals against First Tier Tribunal decisions concerning the "exit tax" that arises on a deemed disposal when the trustees of a settlement or a company cease to be resident in the UK for the purposes of taxation:

1. Four accumulation and maintenance trusts established for family members replaced UK trustees with new trustees, all of whom were resident in Cyprus. Only the UK corporate trustee remained.

2. Redevco Properties UK1 Limited moved its place of effective management to the Netherlands.

Under UK law, an exit charge arose because the trust and company's assets were treated as being disposed of on migration and then immediately reacquired at market value. The issue was whether this charge was contrary to EU law and its principle of 'freedom of establishment'.

In September 2017, the CJEU had ruled that an exit charge was compatible with EU law provided payment by instalments over five or ten years was allowed. Where no deferral option existed, it was unlawful.

The First Tier Tribunals had decided that a conforming interpretation could be adopted but the taxpayers disagreed and appealed, arguing that it was not possible to apply a conforming interpretation, and effectively re-write UK tax law, without transgressing the boundary of statutory interpretation. Such statutory amendment should be reserved for Parliament only and so the exit charge provisions should be disapplied.

Decision

The Upper Tribunal stated that the breach of EU law rights arose, not because of the imposition of an exit tax, but rather because UK law failed to allow a deferral of the payment of that liability.

The Upper Tribunal decided a conforming interpretation of s.59B TCGA 1992 for the trustees and s 59D for companies was permitted to give effect to the taxpayers' EU law rights. Under a conforming interpretation, the law should be read as including an option to defer payment of the exit tax in five equal annual instalments, with the first instalment payable on the normal due date and at yearly intervals thereafter. Such an interpretation provided the "best fit" with EU law requirements and the will of UK Parliament by preserving the integrity of statute law as far as possible. The Upper Tribunal stated that a deferral period of five years was consistent with the CJEU's decision in DMC *(Case C-164/12).*

Referring again to *DMC,* where the CJEU stated that interest may be charged in accordance with the applicable national legislation, the Upper Tribunal found that the First Tier Tribunal had made errors of law in reaching its decision regarding interest not to be paid as part of the conforming interpretations. The Upper Tribunal re-made the First Tier Tribunal's decisions, adopting the conforming interpretation to include deferral of the charge, and finding that interest should be governed by the usual statutory provisions.

The appeals were dismissed.

The Trustees of the Panico Panayi Accumulation and Maintenance Settlements Numbers 1 to 4 and another v HMRC [2024] UKUT 00319 (TCC)

IHT on Maltese property (Lecture P1467 – 15.38 minutes)

Summary – With deemed domicile in the UK, the taxpayer was liable to IHT on his share of Maltese properties to which he had beneficial entitlement.

Martin Falzon, who was born in Malta, died in April 2025, having been resident in the UK for 37 years up to the date of death. As he had been resident in the UK for at least 17 out of the last 20 years before death, he had been found to be deemed domicile for UK tax purposes and so liable to IHT on his worldwide assets.

Following his parent’s death, he had inherited a 1/6th share of properties located in Malta.

HMRC issued a determination that the foreign properties formed part of his estate and was liable to IHT but Marisa Lincoln, the executrix of his estate, disagreed and appealed to the First Tier Tribunal.

Marisa Lincoln’s main argument was that it was not appropriate to apply the provisions of IHTA 1984 in this case, as these were designed to apply to UK situs property. Such provisions were unsuited to apply to property located in Malta as such property was governed by a very different legal code. She stated that applying IHTA 1984 to this case was like "trying to eat soup with a fork".

She also argued that Martin Falzon was not beneficially entitled to the properties so they did not form part of his estate (s.5 IHTA 1984).

Decision

The First Tier Tribunal stated that the issue of domicile was not relevant to this appeal, as it had already been settled by an earlier determination, which was not successfully appealed in time.

The First Tier Tribunal stated that it was bound to apply the law as Parliament has enacted and disagreed that IHTA 1984 did not contemplate situations where property was located overseas. S.43 IHTA 1984 makes it clear that UK legislation applies to property governed by non-UK law.

The First Tier Tribunal found that Martin Falzon had beneficial entitlement to the foreign properties. It was clear from the expert evidence on Maltese law that Martin Falzon enjoyed "full ownership of his share from the entire estate" and could "dispose of it", subject to the right of pre-emption.

This was confirmed by wording made by Martin Falzon in a special power of attorney where he referred to "the properties I have inherited". He believed that he enjoyed beneficial entitlement to the foreign properties. Finally, rent control restrictions did not deprive him of beneficial entitlement but simply diminished the value of his entitlement.

The First Tier Tribunal did not consider the foreign properties formed "settled property". Under Maltese law, there was no evidence of a trust existing or any intention to create such a trust. The First Tier Tribunal stated that the number of legal owners of land in England is restricted to four people, but in this case, there were six beneficial owners. Consequently, when tested under UK law, there would have been a trust in respect of the land under Law of Property Act 1925 and Trustee Act 1925. However, the First Tier Tribunal concluded that such a trust did not meet the definition of settlement in s.43(2) IHTA 1984. The properties were not held in trust for persons in succession or for any person subject to a contingency. Martin Falzon had an absolute beneficial entitlement, including a beneficial entitlement to income as it arose.

The appeal was dismissed

Marisa Lincoln as legal personal representative of Martin Falzon v HMRC (TC09306)

IHT implications under Forfeiture Act **(Lecture P1467 – 15.38 minutes)**

Summary – With the Forfeiture Act disapplied, the taxpayer was entitled to receive his wife’s estate and no IHT was payable.

Philip and Myra Morris had married in their 20s and had a long, happy and loving marriage into their 70s.

In 2021, Myra was diagnosed as suffering from a rare neurological degenerative disorder that was incurable.

Her health progressively deteriorated, he finally agreed to accompany her to a clinic in Switzerland, where she died in December 2023, having self-administered an overdose. All of the evidence supported the fact that Philip was unhappy about his wife’s decision and at no point encouraged her to end her life.

On returning to the UK Philip reported what had happened to the police and explained that he had a whole dossier of documents explaining everything, including various statements from Myra, her solicitor and him. The police confirmed in writing that there was no case to answer.

Under UK law, assisting a suicide is unlawful killing and the Forfeiture Act 1982, applies meaning that Philip Morris could not inherit from his wife’s estate.

Consequently, Philip Morris applied under s.2.2 of that Act for relief modifying the effect of the forfeiture rule, and so allowing him to inherit.

Decision

The court stated that if the Forfeiture Act had applied to disinherit Philip Morris from inheriting, his wife’s estate would have passed to their children and the estate would have been chargeable to IHT.

However, if the rule could be disapplied, his wife's estate would pass to him and there would be no IHT payable.

The court confirmed that, given the combination of Myra Morris' determination to proceed and Philip Morris' reluctant willingness to assist, confirmed that the assistance he gave could not be characterised as encouragement.

The court confirmed that the police had found that there were no grounds for further investigation and that it was not in the public interest for there to be a prosecution.

The court was in no doubt that the Forfeiture Act should be disapplied and that Philip Morris should inherit his late wife's estate.

This could be a very important decision in light of the Assisted Dying for Terminally Ill Adults Bill currently going through Parliament.

Morris v Morris and others [2024] EWHC 2554 (Ch)

Building "suitable for use as a single dwelling" (Lecture P1467 – 15.38 minutes)

Summary – Despite substantial repair and renovation working being undertaken prior to occupation, the property was suitable for use as a dwelling when bought and so the residential rates of SDLT applied.

In 2019, Amarjeet and Tajinder Mudan bought a property in London and paid SDLT on the purchase on the basis that it was residential property.

The married couple subsequently claimed a partial repayment of the SDLT on the basis that the property was not "suitable for use as a dwelling" at completion and required substantial repair and renovation work before they could move in May 2020.

The repair and renovation work included rewiring, installing a new boiler, having a new roof, repairing broken windows, gutting the kitchen and clearing rubbish.

Following an enquiry, HMRC issued a closure notice, concluding the property was residential property.

Amarjeet and Tajinder Mudan appealed but the First Tier Tribunal dismissed the appeal, finding in HMRC's favour.

The couple appealed to the Upper Tribunal, arguing that the correct test was whether the building was suitable for occupation as a dwelling on the effective date.

Decision

The Upper Tribunal stated that case law provided that simply looking at the property as a 'snapshot of habitability' at the effective date was not the correct approach to take. It was important to consider the fundamental characteristics and nature of the building over a period of time.

Adopting a multi-factorial approach, the Upper Tribunal stated that there were several points that needed to be considered when deciding what was meant by the words 'suitable for use as a dwelling'.

These included:

- Had the building been used previously as a dwelling?
- Was the property dilapidated but structurally sound, or was it 'an empty shell with no main roof'?
- Was the building work undertaken to make the property a pleasant place to live? If so, they would not affect suitability for use as a dwelling.
- Without the work being done, was the property too hazardous for the building to be suitable as a dwelling?

The Upper Tribunal decided that although the First Tier Tribunal had made reference to building work which was 'significant', it had made no error of law. It was clear that the property had been and still was suitable for use as a dwelling, and just required some repairs.

The appeal was dismissed.

Amarjeet Mudan and Tajinder Mudan v HMRC [2024] UKUT 00307 (TCC)

Denial of overpayment claim (Lecture P1467 – 15.38 minutes)

Summary – HMRC were correct to reject the taxpayer's claim for SDLT overpayment relief as the overpayment resulted from a mistake in a claim for multiple dwellings relief.

On 15 April 2019, BTR Core Fund JPUT acquired the leasehold in a property in Manchester. The Property consisted of 350 "build to rent" flats and unlet commercial premises on the ground floor, intended to be let to the separate operators of a coffee shop and a cookery school.

BTR Core Fund JPUT submitted an SDLT return, claiming multiple dwellings relief, calculating the SDLT due in accordance with HMRC's internal manual guidance at the time, that the calculation should use the higher residential rates.

Following a change in HMRC's internal manual guidance, it became apparent that the calculation could apply the standard rates. However, the taxpayer was then out of time to amend its return. Consequently, it made an overpayment claim under Sch 10 para 34 for approximately £3 million, on the basis that there was an error in the previous SDLT calculation.

HMRC repaid the sum claimed, with interest but on 25 March 2022, following a check into the overpayment relief claim, HMRC issued a closure notice to recover the sum claimed. HMRC accepted that the SDLT return contained a mistake and that the taxpayer had overpaid tax. However, HMRC considered, that they were not liable to repay the overpaid tax because the overpayment was by reason of a mistake in a claim (FA 2003 Sch 10 para 34A(2) Case A).

Following a review, BTR Core Fund JPUT appealed to the First Tier Tribunal, arguing that the legislation makes a clear distinction between a relief, and a claim for relief. Their mistake was not in the making of a claim, which was simply an administrative or mechanical process. The mistake was in the calculation of the tax chargeable, which was not part of that process. The only legislative requirement for a valid claim was that it had to be included in an SDLT return, and the taxpayer had complied with that requirement.

Decision

The Tribunal stated that the question of whether a person is entitled to a relief is separate from the process by which that relief may be claimed. Entitlement to relief was not in question.

The issue that the First Tier Tribunal needed to decide was concerned purely with statutory interpretation of the claim itself.

The First Tier Tribunal stated that s.58D(1) and Sch 6B provide for relief from SDLT in the case of transfers involving multiple dwellings:

- Sch 6B describes the transactions to which Multiple Dwellings Relief applies;
- Sch 6B also details how the SDLT payable is to be calculated if a claim for relief is made;
- S.58D(2) states that Multiple Dwellings Relief will only apply if it is claimed and that claim must be made in an SDLT return, or in an amendment of an SDLT return.

In this case, the First Tier Tribunal found that even if it was correct to characterise a claim as an administrative or mechanical process, that process included entering a figure for the SDLT payable, a number that was calculated using the Multiple Dwellings Relief rules. As that calculation included a mistake and was included in the claim, the claim for Multiple Dwellings Relief in the return was also mistaken. The fact that the calculation was not made within the SDLT return does not prevent the result of that calculation from being mistaken when it is entered into the return. By entering the result of the calculation in the return, the taxpayer was 'particularising the exact sum which it had to pay'.

The appeal was dismissed.

BTR Core Fund JPUT v HMRC (TC09305)

Note: In this case, the two judges came to different views, with the casting vote taken by the presiding judge who agreed with HMRC.

Fields with a mowing licence **(Lecture P1467 – 15.38 minutes)**

Summary - Despite being used commercially for grass production under licence to a third party, substantial fields were found to be part of the grounds of a residential property.

In February 2022, Mike Lazaridis paid £10,750,000 for a freehold estate of a property in Hertfordshire. The sales brochure described the property as an “exceptional Nash style villa with three cottages set in a mature parkland estate of 106 acres". To the rear of the house was a 40-acre area known as the 'fields'.

Mike Lazaridis submitted his SDLT return on the basis that the property was mixed-use. However, HMRC disagreed stating that the 'fields' formed part of the grounds of the house and that the property was entirely residential. HMRC concluded that Mike Lazaridis owed an additional £1,214,250 in SDLT.

Mike Lazaridis appealed, arguing that the fields were not 'grounds' of the house, as they served, and continue to serve, a commercial purpose, unconnected with the house. At the time of purchase, a mowing licence was in place under which a company was entitled to take away grass cuttings from the field once or twice a year for a fee of £35 per acre.

Did this activity mean that the conditions for the mixed-use rate of SDLT applied?

Decision

The First Tier Tribunal found that the property had been marketed as a villa with three cottages in a mature parkland estate. The fields were close to and partly visible from the house, enhancing its rural character and were proportionate to the property's size.

Under the grass cutting licence, Mike Lazaridis retained access to the fields and could have terminated the licence with minimal consequences as the licence was renewable annually. Cutting took place just twice a year but ensured that the fields were well-maintained and remained in good condition. The licence fee was negligible compared to the property's value.

The First Tier Tribunal found that the property was not marketed as including any land in commercial use, but rather the fields were included under 'gardens and grounds'

The appeal was dismissed.

Mike Lazaridis v HMRC (TC09321)

Pre-completion works (Lecture P1467 – 15.38 minutes)

Summary - The contract had not been substantially completed before the purchase. The assignment of rights to the company, the ultimate purchaser, meant the taxpayer was taxed as the purchaser in a notional transaction under the sub-sale rules and the company was taxed on its actual purchase.

Mr Goldsmith entered into a contract to buy a London property on 19 April 2018 for £1,450,000. The completion date was 24 May 2018.

The Property was a run-down, four-bedroom, semi-detached house which was to be converted it into three self-contained flats to let out. A clause was inserted into the contract allowing Mr Goldsmith to access the property between exchange and completion to carry out certain works, within limited hours. The keys needed to be handed back at the end of each day. Far more work was actually done than contractually permitted, which included structural changes to create the three flats.

G Goldsmith Limited was incorporated on 24th May 2018 with Mr Goldsmith as the sole shareholder and director.

On 31 May, Mr Goldsmith assigned the purchase contract to the company and the company completed the purchase on 5 June 2018, submitting and paying SDLT of £132,250, later claiming Multiple Dwellings Relief, with £46,252 SDLT refunded by HMRC.

Later, following an enquiry, HMRC issued a closure notice refusing the Multiple Dwellings Relief claim on the basis that the contract had been substantially performed on 20 April 2018.

Further, during the course of the enquiry, HMRC established that the contract for purchase had not been signed by the company but by Mr Goldsmith and that he should have paid SDLT on the property. HMRC issued a discovery assessment to Mr Goldsmith, assessing SDLT of £132,250 on the basis that there had been an "assignment of rights" under schedule 2A and/or substantial performance triggering completion under section 44.

Both the company and Mr Goldsmith appealed.

Decision

The First Tier Tribunal was in some doubt as to exactly what work had been completed but concluded that there had not been substantial performance. The Tribunal stated that substantial performance:

> "…requires the buyer to go into occupation of the property as if they had become the owner at that point. They may have to comply with conditions or limitations under the contract, lease licence or other agreement, but there must be an element of freedom to occupy as and when they wish, including all the time, a right to any rents from the property if relevant (specifically dealt with in section 44(6)(a)) and generally, responsibility for the property and liability for the outgoings. As HMRC puts it in its SDLT Manual, the purchaser obtains "the keys to the door" and is entitled to occupy the property".

The First Tier Tribunal also confirmed that the transfer of the contract to the company had given rise to two charges:

1. one on the individual in respect of the transfer; and

2. one on the company in relation to the actual purchase but that Multiple Dwellings Relief was available.

Although sub-sale relief could have been claimed on this double charge, Mr Goldsmith had not applied for the relief, being unaware of the issue.

G Goldsmith Limited and Mr Gia Goldsmith v HMRC (TC09323)

Administration

MTD – Which clients and when? (Lecture P1468 – 11.11 minutes)

Overview – the bare bones of MTD

Taxpayers with mandated income types which are not exempt from the requirements will be required to keep digital records

Taxpayers with mandated income types will be required to update HMRC at least quarterly with details of their transactions, using MTD compatible software: these are known as quarterly updates.

Taxpayers will then make a final submission showing their non MTD income and other relevant data such as pension contributions. This will trigger the final tax calculation for the year and is variously known as 'Finalisation'. The tax computation will be undertaken by HMRC's systems rather that software used for submission. This element of the obligations is not covered by the Regulations, as it replicates the existing requirements in Taxes Management Act 1970 to 'submit a (Self Assessment) return', which have been modified with effect from 2024 to require the taxpayer to 'submit information' rather than a return. As part of finalisation, the income reported on quarterly submissions will be adjusted for tax purposes (and to include accounting adjustments as required) and capital allowances claims made.

Digital start date

The digital start date for MTD determines when a taxpayer must comply with their digital obligations. The digital start date will be set according to the phasing of the commencement of MTD.

Phasing the commencement of MTD

The start of MTD is to be phased as follows:

- From 6 April 2026 taxpayers with mandated income totalling £50,000 will be required to meet their digital obligations

- From 6 April 2027 taxpayers with mandated income of £30,000 will be required to meet their digital obligations

- From a date yet to be decided (either 6 April 2028 or 2029) taxpayers with mandated income of at least £20,000 will be required to meet their digital obligations.

Although the limit set out in statute is £10,000 HMRC announced in December 2022 that the further reduction in the income limit would be kept under review over the next couple of years and an announcement will be made later about any further changes.

The Autumn Budget in 2024 included an announcement that the threshold would reduce to £20,000 'before the end of this Parliament'. This would mean that additional businesses will come within MTD in either 2028 or 2029.

Mandated income

The following are the mandated income types:

- Income from self-employment (but not partnership income);
- Income from property (including foreign property income).

Calculating income for the income thresholds

The income exemption refers to the "amount of the person's qualifying income". This is defined as the sum of the amounts of income before any deductions for each business carried on by the person in the tax year, and for which the amounts are included in the Self Assessment (or equivalent) for that year. Given that income from a property is regarded as a 'property business' this means

- Turnover from all trading activities plus 'other business income' reported on SA103;
- Gross rents and other income received from property reported on SA105;
- Gross rents and other income received from overseas property reported on SA106.

Regulation 21(6) requires the amount used to be annualised if the period included on the return (or equivalent) is a period of other than 12 months. This may produce an upward adjustment for short periods, or a downward adjustment for long periods, for example when a trade has a long period of account to cover a change of accounting date.

The tax year to consider

When the calculation is done for a specific start year, the tax return due to be filed in the January before the start of the tax year should be used to calculate the income levels.

So, for April 2026 start date, we look at the tax return which is due to be filed on 31 January 2026 will provide the date for the income calculation. This is the 2024/25 tax return.

Income calculation for the thresholds

HMRC will issue notices to taxpayers in February 2026 notifying them that they are required to comply with MTD. The income assessment will be carried out on the information in the 2025 tax return, which should be filed by 31 January 2026. As the test is based on the amounts showing on the Self Assessment return, there are some complexities to bear in mind:

The income test is based on the gross income from mandated sources, so will include gross income (i.e. turnover|) from self-employment (but not partnership) and all gross property income receipts, including furnished holiday letting income and income from abroad.

Where the taxpayer benefits from the trading income allowance or the property income allowance of £1,000 so that the income is not entered on to the tax return that income will not be included in the total for the income threshold. Where the income from that source exceeds the limit, the full amount is entered on the return and the deduction given (if the taxpayer so chooses). The deduction does NOT reduce the income for the purposes of the income threshold.

Where the taxpayer benefits from rent a room relief, so that no income is shown from this source on the tax return, again this income will not be included in the total for the income threshold.

Contributed by Rebecca Benneyworth

MTD – Digital obligations (Lecture P1469 – 8.59 minutes)

Digital start date

The digital start date indicates the requirement to meet the digital obligations. It is determined by the gross income from mandated sources for the taxpayer for the relevant year. The limits are:

- For 2026 - £50,000;
- For 2027 - £30,000;
- At some point in the future, but by 2029 - £20,000.

The limit applies to the gross income form mandated sources – that is income from self-employment and income from property.

Digital obligations

In relation to mandated income types, the digital obligations imposed by the legislation are:

- Create and maintain digital records in relation to each mandated income type (where there are multiple trades these will require the records to be separated so that submissions can be made in respect of each trade separately);
- Submit periodic updates – at least quarterly.

In addition, taxpayers will be obliged to submit all other income and claims that would normally go on the Self Assessment return and confirm that the information provided is correct and complete. This is known as finalisation.

Digital records

The requirement to keep digital records applies to trades and businesses in the same way. However, the requirement is there to enable quarterly updates to be made, and therefore does not apply to transactions which do not affect the profit for tax purposes.

This means that balance sheet transactions do not need to be recorded in the digital records. However, it is likely that for businesses using a bookkeeper or accountant they will probably record all of the transactions using double entry so that they have confidence in the records.

It is open to practices and taxpayers to choose the method of digital record keeping most suited to them, but the following rules must be followed:

- Transactions for each quarter must be recorded by the submission date for the quarterly update – this means keeping digital records up to date at least 4 times a year;

- The record must include the date and amount of the transaction and the category to which it relates. The categories are those set out in an Update notice (currently outstanding) but will follow the relevant boxes on the Self Assessment return. (That is SA103 for self-employment and SA105 for property income);

- Where there is more than one obligation per quarter these must be submitted separately, although it is acceptable to use different digital record keeping methods for each separate obligation;

- You must submit all of the information for an obligation in one go. This means that if you have some property income transactions on a spreadsheet and some from an agent in separate software, these will have to be combined before submitting the update;

- Where data is transferred between different record keeping / submission products this must be by the use of digital links. Re-typing totals of transactions is not permitted, nor is cut and paste or copy and paste. It would be acceptable to re-type individual transactions if necessary;

- Retail businesses may record daily takings rather than each individual sale in their digital records.

Functional compatible software

The legislation requires taxpayers to use functional compatible software to submit the updates.

That is software capable of:

- Keeping a record of the transactions

- Submitting the update to HMRC using API's

- Receiving the tax calculation and displaying it for the taxpayer

Where a taxpayer is not using a full function accounting software product, the functional compatible software will comprise the spreadsheet or other record keeping method, plus bridging software allowing the submission.

Quarterly filing

Quarterly updates must then be filed for each business for each tax quarter until the quarter including the cessation date for the business.

If the person becomes exempt under the income limit rules the last quarterly update will be filed for the final quarter of the tax year before the exemption applied.

The amending Regulations laid in late February 2024 specify the following quarter dates:

6 April – 5 July	Due by 7 August
6 July – 5 October	Due by 7 November
6 October – 5 January	Due by 7 February
6 January – 5 April	Due by 7 May

So, every business and every person within MTD will file to the same dates and have the same due dates. This has significant implications for workflow patterns within firms.

Calendar quarter election

Regulation 7(6) allows a person to make an election (on a business-by-business basis) for the filing intervals to be calendar quarters – that is ending on the last day of the preceding month compared to the months set out above.

The election must be made by the due date for the first quarter's return in any tax year and will remain in force for the whole tax year and all subsequent years until it is withdrawn.

Do note that the election applies on a business-by-business basis, so you will need to make the election for all businesses where a client has more than one trade or property business.

In the first year of the election, the Quarter 1 period starts on 6 April; thereafter it will start on 1 April.

Withdrawing the election will take effect for the current tax year if made before the deadline for the Quarter 1 update, and from the following year if made after that date.

Obviously, firms will wish to consider what is most appropriate for them and their clients, and basis period reform may also affect these decisions, but the extra seven days filing window is useful here.

Note that a mismatch between accounting dates and the selected quarters can in some cases cause difficulty – so a taxpayer drawing up accounts to 5 April who makes a calendar quarter election will have to make adjustments to prepare their accounts, so it would be wise to align these.

Digital links

It is clear that, as for VAT, digital links will be required to transfer data from the accounting records to the submission software.

This is likely to be relevant where the digital records are maintained on spreadsheets and bridging software is used to make the submissions, or where accounting records are kept in two separate applications.

Analysis of transactions

Draft notices were released some time ago which specified the headings to be used for transactions.

These were not finalised but followed the analysis on SA103 and SA105 very closely.

We await the final version, but part of your preparation (and work with your software provider) will be to make sure that the account headings you currently use are mapped to the correct analysis headings for the quarterly submissions.

Most full function software will automate the mapping process according to the account types but allow you to amend that if desired.

Three-line account

The current relaxation allowing taxpayers to complete only the income and total expenses boxes is to me retained under MTD so it is possible to submit the quarterly updates on this basis.

However, this is likely to lead to a lack of proper record keeping and non-business expenses being overlooked and included in the updates.

Finalisation

Once the four quarters have been filed (by 7 May following the end of the tax year) the finalisation of the client's tax position must be done by 31 January, meaning that the deadline is the same as for Self Assessment.

Other income sources can be added throughout the tax year – HMRC does not see this as similar to tax return submission, but more of a real time exercise.

That said, there is no obligation for this to be done in year.

Once all of the income is entered, HMRC will perform the tax calculation (it is presently done by software) and the taxpayer will confirm that everything is final.

It is not yet clear how the integration of professional tax software with record keeping software will work, nor exactly how the approval of our clients will work under the new regime.

Contributed by Rebecca Benneyworth

Payroll Update – HMRC Employers bulletin (Lecture B1467 – 21.42 minutes)

Reporting early in December

In December 2018 HMRC advised a "temporary easement" on reporting PAYE information in real time where employers were paying their employees earlier than usual over the Christmas period. This easement was made permanent for December 2019 onwards and so will apply for December 2024.

This December some employers will pay salaries and wages early due to closing the business over the festive period or wanting to pay employees early for Christmas period. Under the easement if an employer does pay early over the Christmas period, they must report their normal (or contractual) payday as the payment date on the Full Payment Submission (FPS) and ensure that the FPS is submitted on or before this date. Doing this will help protect an employee's eligibility for income-based benefits such as universal credits, as reporting the payday as the payment date may affect current and future entitlements

For example: if they pay on Friday 19 December 2024 but the normal/contractual payment date is Wednesday 31 December 2024, the employer must report the payment date on the FPS as 31 December and ensure the submission is sent on or before 31 December.

How salary sacrifice affects national minimum wage

By law the National Minimum Wage, NMW, is the lowest rate that can be paid to an employee. The rules for NMW also apply to the payment of National Living Wage, NLW, which currently applies to employees aged 21 and over.

HMRC carry out checks on employers to ensure the correct rates of NMW and NLW are paid to employees. Employers who fail to pay NMW are liable to a financial penalty of up to a maximum 200% of the arrears owed to the workers. This penalty applies to any notice of underpayment relating to a pay reference period beginning on or after 1 April 2016. The maximum penalty is capped at a maximum of £20,000 per worker. The penalty is reduced by 50% if the unpaid wages and penalty are paid within 14 days. Where an employee has been underpaid the NMW the arrears are calculated at the current NMW rate in force at the time the underpayment is calculated.

Salary sacrifice schemes are one of the causes of NMW/NLW underpayments. From 28 October 2024

HMRC has been presenting a series of live webinars to help employers understand how “salary sacrifice” interacts with NMW.

A salary sacrifice scheme is an arrangement where the employee gives up an amount of their contractual pay in return for a benefit, for example - benefits in Kind such as medical cover or E’er pension contributions. If reduced contractual pay takes the employee’s wages below NMW or NLW the employee will be underpaid. The employer would need to rectify the underpayment at the current rate and they may be charged penalties.

Example

An employee works 25 hrs a week, 1300 hours pa and is paid at £12.40 an hour. This gives them an annual salary of £16,120.

This hourly rate is above both the NMW and NLW rates.

The employee then agrees to give up, sacrifice, £1,500 of salary in exchange for medical benefit.

Their contractual pay is adjusted to reflect this sacrifice and their new gross pay is reduced to £14,620 p.a.

To check NMW and NLW:

> Divide £14,620 by annual hours = hourly rate of £11.25
>
> This is BELOW the NLW rate

To avoid breaching NLW, the employee’s annual pay cannot fall below £14,820, 1300 hours at £11.40 current NLW.

Non salary sacrifice deductions from pay

Where an employer makes deductions from pay, which do not reduce the contractual pay, the usual NMW/NLW rules apply. This means the employer must check that the pay after making the deduction does not breach the NMW and NLW rates. e.g. where the deduction is made for the employer's 'own use and benefit' and they are free to use that money in any way. It does not matter:

- whether the employer makes a profit from the transaction or not,
- if the deduction is made from gross or net pay,
- if the deduction is made under an agreement entered into with the worker,
- whether or not the worker benefits from the arrangement

Example

An employer provides transport for workers at a loss, any deductions made from wages for providing it will help to reduce the loss.

The amount the employer gains by making the deductions is for their own use and benefit and so would need to be checked to ensure no breach of NMW/NLW rules.

Avoiding duplicate employments

HMRC has reminded employers yet again in their October Bulletin how to avoid creating duplicate employments.

When an employee starts:

- Make sure the starter notification and the first full payment submission (FPS) include accurate personal details of the new employee. This will avoid having to make amendments on future FPS to their name, date of birth or gender.
- Be consistent with information e.g. if William Smith is shown on the first FPS use that name of all submissions. Do not amend their name to Bill Smith or W Smith in the future.
- Report the start date and starter declaration information just once – do not repeat the start date again in later FPS
- Employers do not need to report any changes to the employee's start date to HMRC on any subsequent FPS
- Any change to the start date should be recorded correctly in payroll system

Employee Payroll ID

Each employee is required to have a unique payroll ID or employee number of employee payroll number. This ID will usually appear on their payslip. Where an employee works in more than one job, which are on different payrolls, within the same PAYE scheme then it is important that the employee's ID is different on each payroll.

If the payroll software generates the IDs the employer should understand that process and ensure unique employee numbers or employee payroll numbers are used within the PAYE scheme.

Where an employee leaves and is re-employed a new and different employee number or employee payroll number must be used and the employee's year to date figures must be set at 0.00.

When or after an employee leaves

When an employee leaves the employment, there is no need to report any changes to their leaving dates to HMRC, although any changes should be updated on the employer's records.

An employer should not submit an FPS after one has already been submitted with a leaving date, unless it is a correction or a payment after leaving.

Payments after leaving and corrections made after leaving must include the original date of leaving as per the FPS submitted when employee left

Employers should only set the "payment after leaving" indicator if they have issued a P45 to the employee and have made a further payment

Employers should not submit a duplicate or identical FPS reporting a "payment after leaving" unless they have received a rejection notice for the original FPS.

Using reference numbers for early and late payments to prevent payment allocation issues

To ensure the correct allocation of payments employers must not forget to add the extra 4 numbers to their 13-character accounts office reference number when making:

- An early payment before 6th of the tax month or quarter the payment is due
- A late payment on or after the 5th of the tax months after the payment was due

The four numbers to be added are made up of the tax year plus the tax month of the payment. For example: the payroll payment for tax month 6 November to 5 December would be 2508 and the payroll payment for tax month 6 March to 5 April would be 2512

From April 2024 HMRC stopped issuing the yellow payslip booklets so when paying by cheque the employer must state on the reverse of the cheque their 13-digit accounts reference plus the 4 extra digits to ensure the payment is allocated to the correct month.

Reference for paying March 2025 remittance would be "120/PJ02466509 PLUS 2512"

New data requirements on employee's hours

Between March to May 2024 two draft statutory instruments were issued by HMRC:

- Income Tax (Pay as You Earn) (Amendment) Regulations 2024
- Income Tax (Additional information to be included in Returns) Regulations 2024

The draft instruments were issued with the objective of improving the quality of data collected by HMRC through the tax system. The purpose of the improved data HMRC say is to “provide better outcomes for taxpayers as well as improving compliance resulting in a more resilient tax system”.

The regulations specify additional information about employees’ hours which employers are required to report in their Real Time Information, RTI, returns.

The new requirements were due to take effect from April 2025. However, due to the delay caused by the election and lead-in time required to prepare for implementation the date is now April 2026.

From April 2026 employers will be required to provide, through RTI reporting, details of an employee’s paid hours. Currently employees’ hours are reported under these bands:

A – up to 15.99 hrs

B – 16 to 23.99 hrs

C – 24 to 29.99 hrs

D – 30 hours or more

E – Other –used if EE has no regular work, zero hours workers or receiving a pension

Employers must report the total hours paid for each employee in a numeric format for each pay day. Where the employee’s contract states the number of hours those hours will be reported plus any additional hours worked. For salaried staff their contracted hours will be entered based on hours per day times number of days worked in a week multiplied by 52 divided by 12. For directors where there are no contracted hours the RTI system should pick up “director” from the NIC boxes and so no hours will be reported.

Where all or part of the payment to an employee does not result in any hour’s data, the employer will be required to tell HMRC the reason for that fact. Employers can choose from this list of descriptions:

- Statutory payments – SSP, SMP etc
- Taxable benefits in kind being processed through the payroll
- Redundancy payments and similar termination payments
- Employees who are paid based on output, e.g. piece work
- Office holders such as directors or public positions not subject to contractual terms mentioning hours worked

Employer PAYE and CIS repayments

HMRC say it is developing improvements to support online claims for repayments. Currently an employer can submit a repayment claim online for construction industry scheme, CIS, deductions suffered.

The improvements HMRC is making to the online claim form will enable claimants to upload evidence for their CIS repayment claim when requested by HMRC. When the claim has been submitted the claimant will be directed to the online tool to find out when they can expect a reply from HMRC.

HMRC is also introducing an online claim form for PAYE repayments. Before requesting a PAYE repayment employers are advised to follow the guidance at You paid HMRC the wrong amount (https:// www.gov.uk/payroll-errors/correcting-payments=to-hmrc) to check why there is an overpayment. Where an overpayment or duplicate payment has been made employers should correct their account by paying less on the next payment to HMRC.

Improving data capture of business tax identifiers on the RTI full payment submission

The HMRC Unique Customer Record programme is a building block needed to deliver a trusted and modern tax administration. HMRC states "it should be easy for people to pay any tax due and for most people the calculation and payment of tax should be effortless".

This is because the unique customer record carries all the customer's key information:

- Taxes and services they are enrolled for;
- Money they owe to HMRC;
- Money HMRC owes them.

HMRC is always looking to improve the quality of data received and held. Employers can help by entering correct data & completing all the relevant boxes when completing an FPS.

For employers registered for payroll taxes the employer must enter:

- Self Assessment (SA) UTR if they are either a sole trader or a partnership;
- Corporation tax reference, COTAX, if registered for corporation tax.

If this information is not known, once received, it should be entered into payroll software & that will update HMRC records when the next FPS is submitted.

Contributed by Alexandra Durrant

Travel and subsistence discovery (Lecture P1466 – 15 58 minutes)

Summary – HMRC did not make a valid discovery in respect of overclaimed travel and subsistence expenses and so the taxpayer's appeal was allowed.

Julian Lowe was employed in the water industry and undertook extensive business mileage and subsistence expenses on such items as dining and hotels. He paid the expenses, completed an expense claim form and was then reimbursed by his employer.

He appointed a tax agent, who prepared his tax return based on his expense claims, highlighting whether or not there were expenses which were not tax deductible.

Suspecting that he was claiming expenses that were not deductible, HMRC opened an enquiry, discovering that some of the expenses related to a consulting business that Julian Lowe was trying to set up.

As a result, in April 2023, HMRC raised discovery assessments covering the tax years 2017/18 through to 2020/21, denying certain deductions on the basis that the taxpayer and his agent had acted carelessly by making incorrect expense claims, providing no material either to HMRC to justify his claims. Further, the taxpayer did not keep adequate records and did not check the return's produced by his agent.

Julian Lowe appealed.

Decision

The First Tier Tribunal stated that it is for HMRC to demonstrate that, on the balance of probabilities, a valid discovery has been made.

The Tribunal found that, based on one telephone conversation in February 2023, HMRC proceeded from the opening enquiry letter to the issue of the assessments. Although the opening enquiry letter indicated that the taxpayer should provide supporting evidence for their claims, HMRC did not wait until it was so provided or make any attempt to obtain that evidence, before issuing the assessments.

It was not clear whether the assessing officer was also the officer who made the discovery. The only reason that the First Tier Tribunal thought the assessing officer might also be the officer who made the discovery was based on their experience that the discovery officer usually provides a witness statement and the only statement provided by HMRC was one made by the assessing officer.

However, this statement made no reference to an officer making a discovery nor the date on which it was made. As the HMRC officer did not attend the hearing, this could not be clarified and further, the taxpayer was not given the opportunity to challenge HMRC's 'discovery'.

The First Tier Tribunal found that an enquiry was opened on 8 February 2023 and that on 11 April 2023 the assessing officer wrote to Julian Lowe advising that the officer would be issuing the assessments which were issued on the same date.

No evidence was provided by HMRC to support the expenses being denied and as stated above, no mention was made of the making of a discovery nor the basis on which it was made.

Without HMRC's supporting oral evidence, the Tribunal was not prepared to accept that the assessing officer's witness statement was any evidence that a discovery was made.

With no discovery made, it did not matter if the taxpayer and his agent had acted carelessly.

The appeal was allowed.

Julian Lowe v HMRC (TC09285)

Anonymity allowed (Lecture B1466 – 20.56 minutes)

Summary – Discovery assessments arising as a result of the taxpayer failing to keep business records and to notify HMRC of his liability for almost two decades were upheld but the taxpayer's details were anonymised

The taxpayer made an application for the appeal to be heard in private and the decision to be anonymised.

He stated that he was financially assisted by family in a country with a poor record regarding human rights, known to take action against residents who provided support to family members in countries such as the UK. He was concerned that there would be significant risk to his family in that country if the decision was not anonymised.

The First Tier Tribunal accepted the taxpayer's argument. Given the circumstances, this risk to the taxpayer outweighed the principle that justice should be done in public. As a result, the hearing was heard in private and the decision anonymised. The taxpayer is referred to as Mr E throughout

Mr E was a well-educated man, who had undertaken several courses of university study in the UK. He operated a takeaway food business which commenced business at some in 2000/01. However, he failed to notify HMRC that he was chargeable to tax and kept no business records for almost two decades. This was not disputed.

HMRC opened an investigation into Mr E's tax affairs in June 2018 and later, issued discovery assessments covering the tax years 2000/01 to 2018/19, together with associated penalties.

Mr E appealed but gave unusual and inconsistent explanations as to why he had not filed tax returns or kept business records.

He believed that he was not required to file tax returns because he was trading well below the VAT threshold but also claimed that he would be paid state benefits if he filed returns and he had decided not to file because he did not want to be a burden on the state.

With regards to his business records, he did not consider that it was reasonable for him to be expected to have kept business records after all this time.

Further, given his family obligations and situation, he should not have been expected to have kept any business records and also that due to his family obligations being onerous, he did not have the time or resources to keep business records

Decision

The First Tier Tribunal stated that, given the inconsistencies in his arguments, Mr E knew that he was required to comply with tax obligations but chose not to do so. He made no attempt to confirm and comply with his income tax obligations when starting the business.

The First Tier Tribunal found that Mr E had been negligent meaning that the assessments were validly raised. His behaviour which led to the loss of tax was deliberate. Any disclosure was clearly prompted by HMRC's enquiry. The First Tier Tribunal found that the penalties were correctly assessed as "deliberate and unconcealed". Further, there was no reasonable excuse and no special circumstances applied.

Having considered the evidence presented, the First Tier Tribunal stated that it could not rely on any of Mr E's evidence that the shops were not capable of generating the turnover assessed by HMRC. He failed to meet the burden of proof on him to displace HMRC's assessment of turnover for the periods under appeal. The same applied to his deductible expenses, although small amendments were agreed.

The assessments and penalties were upheld as amended and the appeal was dismissed.

E v HMRC (TC09307)

Reliance on advisers (Lecture P1466 – 15 58 minutes)

Summary - Reliance on an adviser was not a reasonable excuse for failing to comply with an information notice, and penalties were upheld without mitigation.

David Hill and David McCracken were scheme administrators for two pension schemes which were operated on their behalf by Liddell Dunbar Ltd, a firm which later went into liquidation.

In January 2018, HMRC issued information notices to both scheme administrators. The firm advising the scheme administrators, Independent Tax, informed them that, as the pension scheme had been wound up there 'should be no need to respond' to the information notices.

An HMRC review was requested, which upheld the information notices, subject to variation of some of the content. No appeal was made against the information notices at that stage.

HMRC issued £300 failure to comply penalty notices to the scheme administrators, followed in February 2019, by daily penalties. HMRC wrote to the advisers, copying in David Hill and David McCracken, outlining that as no appeal had been made in regard to the information notices, these were now settled and penalties applied.

Daily penalties were initially charged at £30 a day, but this was later increased to £60 a day. By December 2019, penalties had reached over £20,000 for each of the appellants. Appeals were made against the penalties on the basis of reasonable excuse, and, in the alternative, mitigation of the penalties requested.

Decision

Under FA 2008 Sch 36 para 45, liability for a penalty can be set aside where the individual has a reasonable excuse.

Under para 45(2)(b), this includes reliance on a third party, subject to the caveat that 'where the person relies on any other person to do anything, that is not a reasonable excuse unless the first person took reasonable care to avoid the failure or obstruction'.

Clients are not expected to be tax experts, but they are expected to read official information and ask appropriate questions. In this case, neither of them had read the information notices, which were addressed to them personally, nor had they queried with their advisers why they were being addressed as pension scheme administrators, when these appointments were apparently made without their knowledge.

Under FA 2008 Sch 36 para 48(4)(b) on appeal, the tribunal may substitute for the HMRC decision another decision that HMRC had power to make. For HMRC it was contended that this gave the tribunal only supervisory jurisdiction, and it could only remake the decision if HMRC's original decision was flawed. The First Tier Tribunal firmly rejected this view, stating that it had full appellate jurisdiction. Notwithstanding, in this particular case, the First Tier Tribunal considered that the quantum of the penalties was not excessive.

David Hill and David McCracken v HMRC (TC09293

Information notices – Tribunal cases (Lecture P1470 – 17.13 minutes)

This article considers two recent tax tribunal cases relating to information notices issued by HMRC under the provisions of Schedule 36, Finance Act 2008. Unless stated otherwise, all statutory references are to Schedule 36, Finance Act 2008. It is important to stress that each case will be determined on its facts.

Furlong Services Ltd v HMRC [2024] TC09252

HMRC had opened an enquiry into the 2016/17 tax return of Mr Curtis, the sole director of Furlong Services Limited (“Furlong”). HMRC’s Fraud Investigation Service took over the investigation into the director’s affairs, and subsequently started an investigation into Furlong.

HMRC had become aware that the director had disposed of shares in another company, Select Management Limited (“Select”). HMRC requested details of the consultancy income that Mr Curtis had received following the disposal of shares in Select. Mr Curtis’s advisers told HMRC that the subsequent consultancy services had been completed by Furlong, as the consultancy agreement had been novated to that company. The consultancy work was connected with football, but Furlong’s tax computations, for the periods ending 31 March 2017, 31 March 2018 and 31 September 2019, did not make any reference to football or consultancy, only to farming activities.

HMRC issued an information notice to Furlong, under Paragraph 1, on 1 December 2022. The company appealed against the information notice. In response to the appeal, some of the items were removed from the notice.

The company requested a review of the revised information notice by an independent HMRC officer. An amended information notice was issued, following the removal of certain items from the original notice. The company submitted an appeal against the amended notice. There were various case management issues noted in the decision, but they are not considered here.

The company disputed all the items contained in the (amended) information notice. The items were challenged for a variety of reasons, including whether certain items were “statutory records”, whether the HMRC officer has reason to suspect that tax had been underassessed, whether HMRC could request old documents, and whether information or documents were “reasonably required” to check the company’s tax position.

The items included in the amended information notice, following the HMRC review, as noted in the tribunal decision, were as follows (the numbering from the original information notice was used, and noted in the decision):

Item 1 - A breakdown of the income declared by Furlong in its accounts for each of the period periods ending on 31 March 2017, 31 March 2018, 30 September 2019, 30 September 2020 and 31 July 2021 splitting the income based on its sources (e.g. income from farming, income from football etc).

Item 2 - -Additional details of income relating to the football industry that Furlong has received over the last six years. This should include a breakdown of the football income, including who the work was completed for and the amount of income.

Item 4 - For the period ended 30 September 2019, details of the travelling expenses totalling £66,854. This should include the date expenditure was incurred and its value as well as an explanation of the business purpose.

Item 5 - Copies of all consultancy agreements drawn up between Furlong and other parties for work to be completed relating to the football industry.

Item 7 - Invoices for the travelling expenditure incurred during the period ending 30 September 2019.

Following consideration of the evidence, the tribunal confirmed, set aside, or altered, the requirements, as noted below:

Items 1, 2 and 5 were considered together. Item 1 was confirmed, and Items 2 and 5 were varied. The tribunal made further variations, where it was considered that the language used could be clearer. The judge considered that items 1 and 2 related to statutory records, rejecting counsel for the company's argument that a "breakdown" of income is not a statutory record because it is asking for new documents to be brought into existence. The judge considered this to be a request for "information", noting that the definition of a statutory record in Paragraph 62 applies both to information and to documents. However, the judge considered that Items 1 and 2 were statutory records, but only in so far as they relate to the periods ending on 30 September 2019, 30 September 2020 and 31 July 2021. The documents requested at item 5 were not considered to be statutory records. The tribunal found that HMRC had discharged the burden of showing that there was a relevant "reason to suspect", but not for the periods ending on 30 September 2020 or 31 July 2021. Although the taxpayer had sought to argue that HMRC were on a "fishing expedition", the tribunal determined that Items 1, 2 and 5, subject to the variations noted, were reasonably required for the purpose of checking Furlong's tax position.

Items 4 and 7

The tribunal noted that a company's statutory records include records of all expenses incurred in the course of the company's activities, and the matters in respect of which the expenses arise. It followed that records of the dates on which travelling expenses were incurred, and in what amounts, also form part of Furlong's statutory records. As such, there was no right of appeal in relation to that aspect of the information notice. Invoices relating to the travelling expenses were also considered to fall within the definition of a statutory record.

The judge noted that it was not clear to her whether an "explanation of business purpose" in relation to the travelling records was a statutory record, and there had not been any detailed submissions on this matter. The judge therefore went on to consider whether the explanation was “reasonably required” to check the company’s tax position for the period ending 30 September 2019. The judge determined that it was so required.

The company was directed to comply with the varied information notice within 30 days of the date of the release of the decision.

The case decision is available in full at:

https://www.casemine.com/judgement/uk/66abd4c0c1cce041313c8624

Sangha v HMRC [2024] UKFTT 564 (TC)

In this case, HMRC issued several information notices to Mr Sangha, under Paragraph 1. HMRC had opened enquiries into Mr Sangha's tax returns for 2015/16 and 2016/17, and the information notice, which was the subject of the hearing, issued on 13 October 2021, related to those enquiries, particularly his income from property and directorships.

Mr Sangha requested a review of the information notice by an independent HMRC officer. An amended information notice was issued, following the removal of certain items from the original notice. Mr Sangha submitted an appeal against the amended notice. There were various case management issues relevant to the case, but they are not considered in this session.

Mr Sangha disputed all the items contained in the information notice. The items were challenged for a variety of reasons, including the status of statutory records, whether information or documents were “reasonably required” to check Mr Sangha’s tax position, and whether certain items were in his possession or power.

The tribunal considered each of the 12 items contained in the information notice. Some of the items were set aside, for various reasons, while the rest were varied. Although the case was decided on the facts, there are some useful insights as to what the tribunal considered appropriate for HMRC to require the taxpayer to produce.

The items included in the amended information notice, following the HMRC review, as noted in the tribunal decision, were as follows:

1. Bank statements for Evolution Drinks from 28/03/14 to date (Mr Sangha was previously a director of a company based in Hong Kong, known as Evolution Drinks Hong Kong Ltd, which was wound up in March 2017).

2. The last set of accounts of Evolution Drinks.

3. “The paperwork requested”. The tribunal noted that this appeared to be a reference to a letter written by Mr Sangha to the former accountants of Evolution Drinks in Hong Kong, requesting copies of the bank statements and accounts referred to in items (1) and (2) above.

4. Bank statements for the Chase account relating to the period when the Chase account was active. HMRC understood that the account was opened in August 2010. Mr Sangha had already provided statements for when the account was dormant; HMRC requested them for the period when the account was active.

5. Details of all overseas bank accounts in which Mr Sangha holds an interest, including the country, sort code, account number and named person on the account(s).

6. Information on when the accounts opened and closed, plus all the account and bank statements for the relevant years.

7. All correspondence and agreements between Mr Sangha and Mr Ghuman regarding a sum of £100,000 paid to Yagna Limited (An amount of £100,000 or £125,000 had allegedly been paid by Mr Ghuman to Mr Sangha, and then invested in Yagna Ltd. Mr Sangha had disposed of shares in Yagna Ltd in August 2015. HMRC considered that the amount was additional remuneration).

8. Information on whether the £100,000 has now been paid back.

9. In a letter dated 4 November 2020, Mr Sangha's agent stated that further comments would follow. HMRC requested these further comments.

10. Mr Sangha's comments on an article published in February 2012 by Insider Media Limited concerning Octavian (the relevant article described Mr Sangha as Mr Ghuman's business partner, and not company secretary/adviser as the taxpayer had stated).

11. An explanation as to why, according to joint bank accounts for Mr and Mrs Sangha, they received £71,250 from Asiana in the tax year 2015/16, when for that year Mr and Mrs Sangha only declared gross income that nets to £48,959.

12. The reply Mr Sangha received from NatWest that states they cannot provide credit card statements going back to August – November 2015.

The tribunal noted that the items requested in the information notice were not numbered point by point and adopted the above numbering in their decision.

Following consideration of the evidence, the tribunal set aside, or altered, the requirements, as noted below:

Items 1 and 2 – these items were set aside, as HMRC had failed to establish that any of the information or documents requested in the information notice were statutory records. Further, HMRC had failed to show that the bank statements and accounts of Evolution Drinks were in Mr Sangha's power or possession.

Item 3 - this item was set aside, as HMRC were no longer seeking this document.

Item 4 - the requirement at item 4 was varied, to restrict the provision of bank statements for 2016/17, and those statements not already sent to HMRC for the previous year. HMRC had failed to make any submissions to show how Mr Sangha's tax position in the years 2015/16 and 2016/17 might be affected by undeclared income, if any, received in earlier years.

Items 5 and 6 - these requirements were varied, firstly to restrict the information and documents sought to the years under enquiry; secondly, to clarify the wording such that the accounts in question are any which Mr Sangha has the power to operate, rather than the wider term used by HMRC in the information notice.

Items 7 and 8 – the requirements were varied, as the tribunal determined that HMRC were entitled to know whether Mr Sangha received the payment in the years under enquiry.

Item 9 – this item was set aside. The tribunal agreed with the taxpayer's counsel that the request could not stand as it was drafted, as it was not sufficiently clear what was being asked for. The tribunal considered what was being requested and determined that HMRC had not demonstrated that the information was reasonably required to check Mr Sangha's tax position for the years under enquiry.

Item 10 – the tribunal agreed that a request for "comments" was too vague. The requirement in the information notice was varied to specify particular information, but only in relation to the period under enquiry.

Item 11 – this requirement was varied, to request only information relating to Mr Sangha. The tribunal considered that this item in the information notice was problematic, as it requested information which relates to Mrs Sangha's tax position, and the information notice was addressed to Mr Sangha.

Item 12 – this item was set aside. The tribunal considered that HMRC had failed to articulate with sufficient clarity what information they were seeking. The tribunal considered that the only cogent request for information or documents in item 12 was for a letter from NatWest, and found that, on the limited evidence and submissions available, HMRC had not demonstrated that this was reasonably required to check Mr Sangha's tax position for the years under enquiry.

The case decision is available at:

> https://www.casemine.com/judgement/uk/6682f619c8cba81d15ef303c#:~:text=were%20statutory%20records.-,Mr.,requests%20for%20information%20and%20documents

Practical considerations

In relation to the two above cases, the following are a summary of key points:

- The burden of proof rests on HMRC to show that an information notice has been validly issued, and that the requirements of Schedule 36 have been met;

- The onus is on HMRC to prove that items requested are reasonably required for the purpose of checking the taxpayer's position;

- HMRC also bear the burden of showing that any information or documents requested by an information notice are statutory records in relation to which there is no ability to bring an appeal;

- When dealing with an information notice, establish what is being requested (or is the requirement too vague?).

- Consider using the review process, and tribunal, as part of any challenge against an information notice (after exhausting options with the enquiry officer).

Contributed by Phil Berwick, Director at Berwick Tax Limited

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Deadlines

1 December 2024

- Corporation tax for periods to 29 February 2024 (SMEs not paying by instalments)
- Check HMRC website for advisory fuel rates changes

7 December 2024

- VAT returns and payment for 31 October 2024 quarter (electronic)

14 December 2024

- Quarterly corporation tax instalment for large companies
- Monthly paper EC sales list – businesses in Northern Ireland selling goods only

19 December 2024

- PAYE, NICs, CIS and student loan liabilities for month to 5 December 2024 if not paying electronically
- File monthly CIS return

21 December 2024

- File online monthly EC sales list – businesses in Northern Ireland selling goods only
- Submit supplementary intrastat declarations for October 2024
  - arrivals only for a GB business
  - arrivals and despatch for businesses in Northern Ireland

22 December 2024

- PAYE, NIC, CIS and student loan liabilities if paying electronically 30 December 2024
- Online SA tax returns if underpayments to be collected by a PAYE coding adjustment

31 December 2024

- Companies House should have received accounts for:
  - private companies with 31 March 2024 year ends
  - public limited companies with 30 June 2023 year ends
- CTSA returns for companies with accounting periods ended 31 December 2023
- End of CT61 quarterly reporting period
- Year end for taxable distance supplies to UK for VAT registration

News

President Trumps 2nd term programme (Lecture B1469 – 18.39 minutes)

The return of Donald Trump in January 2025 to the White House promises a radical programme of tax and tariff measures. This is reinforced by the fact that the Republicans have control, albeit narrowly, of the House of Representatives and the Senate as well as enjoying a decisive majority in the Supreme Court.

What can we learn from the first Trump presidency in terms of what may happen in the second one when looking at taxation and economic policy? The first Trump administration passed a number of radical changes in terms of tax policy. The Trump administration reduced the Corporation Tax from 28% to 21%. It also reduced the rate of federal income tax although this was partially financed by reduction of allowances notably the deduction for state taxes paid. Generally, it was Democrat controlled states that had higher state taxes and by reducing the State tax deduction, President Trump was therefore targeting tax rises on his Democrat opponents.

There were also some substantial tax rises in terms of tariffs on China and other countries accused of unfair trading. Here, unlike the state tax deduction, the policy generally attracted bi-partisan support. President Biden did not reverse the tariffs and indeed increased some of the protectionist measures. The Inflation Reduction Act is a good example of funds being used for a protectionist agenda which encourage the movement of American manufacturing back into the United States after having been offshore for many decades.

The efficacy of these policies is still debated strongly. In particular, the tariffs which supported the steel industry, which is based in important swing states such as Pennsylvania, may have protected the industry but probably contributed to job losses in the car industry which had to absorb higher costs for essential raw materials in car making.

President Trump has made it clear that he views tariffs as an essential economic and political tool. He indicated that he would sign Executive Orders imposing a 25% tariff on Mexico which was anticipated. But, more surprisingly, he wants to impose a 25% tariff on Canada; citing lax border controls as the reason for these new tariffs. He is therefore using tariffs as a political weapon to pressurise Canada and Mexico to tighten up border security. He has also indicated that he will impose a 10% tariff on China which is less than the 60% that he discussed during the election campaign, but it remains to be seen whether this will be increased.

The new Treasury Secretary in the Trump administration, Scott Bessent, has stated.

> "President Trump speaks like a New York City real estate developer, and that is the opening gambit. It is a maximalist negotiating position."

The purpose of tariff plans is not just to raise revenues or rebalance trade but to extract negotiating concessions.

He wrote on the Fox News website straight after the election:

> "Tariffs are a useful tool for achieving foreign policy objectives, whether it is getting allies to spend more on their own defence, opening foreign markets to US

> exports, securing cooperation on ending illegal immigration and interdicting fentanyl trafficking, or deterring military aggression."

To maximise the effectiveness of any negotiating strategy, Trump would not impose high tariffs immediately. Instead, he would gradually phase them in over a two-year or even three-year period, thereby steadily intensifying economic pressure.

> "I have spoken to President Trump, spoken to his team, and I think everyone is on board with a kind of forward guidance or phased-in tariff," Bessent said.

So, 10 per cent on China may be only an opening ploy.

The domestic tax cuts which were originally passed in 2017 were on a temporary basis and were due to expire in 2025. The Trump administration unsurprisingly would want to retain these tax cuts and sees tariffs as a way of funding domestic tax cuts

There are other proposals such as allowing overtime to be tax free and potential substantial reductions in income tax which again were promised to be the result of extra revenues arising from tariffs but also a substantial reduction in the employee numbers and the activities of the federal government.

It remains to be seen whether these cuts come to fruition. In terms of control of Congress, although the majority is relatively small for the Republicans in both houses the political situation is different than in the first Trump term, in that there is a much larger percentage of supporters of the Trump programme than previously in the Republican Party. It is therefore more likely that whilst the Republicans retain a majority in both houses of Congress that radical measures could be enacted.

Normally, a president has about two years to enact radical measures before the midterm elections which normally deprive the president of a majority in one or both houses of Congress. This is particularly the case in the second term of a president, where quite often during the last two years the president is seen as a "lame duck" with a decreasing amount of power and influence. Donald Trump has defied political gravity before and so one cannot be sure that this will come to pass in 2026.

The speed of which appointments have been made to federal positions and the announcements that have been made indicate that there is a programme which has been planned and is going to be implemented at speed. This is in contrast to a somewhat less organised programme at the start of the first Trump presidency.

The effect on the world economy is uncertain but a tariff war would undoubtedly reduce world GDP and would provoke retaliation from most of the countries which are targeted for tariffs.

In terms of tax cooperation, the Republicans are notably less keen on Pillar One and Pillar Two of the OECD programme for tax cooperation. Pillar Two which effectively imposes a 15% minimum corporate tax rate has attracted considerable negative comments from Republicans in the House of Representatives. It remains to be seen whether the Trump administration will proceed with these proposals and the effect if they pull out.

The difficulty with them for Pillar Two is that if the US does not impose the 15% minimum tax rate, other countries will effectively take that money. If Pillar One fails, the question would be whether the US would threaten tariffs on any country which, for example, imposed the Digital Services Tax (DST). The DST, in the eyes of the US government, taxes US multinationals unfairly.

The problem is that the tariff weapon is one that can only be used once or twice rather than over a long period for policy decisions and therefore the more it is used, the less effective it becomes.

Donald Trump was recognised in his first term as being a transactional president who would do deals on a bilateral basis with some of his opponents such as the leader of North Korea. He prefers bilateral deals to deals with multilateral organisations such as the European Union. This would lead potentially to reduced coherence on the international stage where countries do individual deals rather than through the multilateral organisations that they are members of.

Companies will need to keep a close watch on the impact of US tariffs and other decisions that could affect both their customer base and their supply chain. As usual it would be better, in the first instance, for companies to collate information rather than taking hasty and premature actions.

Contributed by Jeremy Mindell

Electronic signature required

From 6 April 2025, tax agents submitting income tax or PAYE repayment claims, who are nominated to receive the repayment, must use an advanced electronic signature process to obtain the appropriate authorisation from clients.

The advanced electronic signature must:

- be uniquely linked to the person signing the data in electronic form;
- give the person signing sole control of the signature data; and
- be able to detect any changes made to the signature data afterwards.

HMRC states that the agent must keep evidence of signing up to an advanced electronic signature service provider in the form of a headed letter, email invoice or confirmation email.

HMRC may also ask for evidence of specific clients' claim authorisation using the new process as part of routine compliance checks.

https://www.gov.uk/guidance/receive-income-tax-or-paye-repayments-on-behalf-of-others#full-publication-update-history

Business taxes

A surprising twist in basis period reform (Lecture B1468 – 14.33 minutes)

The basis period reform rules for unincorporated businesses have thrown up a number of unexpected situations, particularly in connection with the transitional 2023/24 tax year.

However, before we look at one interesting relief which can arise where there are losses, it is probably expedient to issue a brief reminder of what the main FA 2022 legislation involves.

For income tax purposes, the Government are moving from a current year basis to a tax year basis. In other words, for 2024/25 onwards, the trading profits of a tax year will be those arising in the tax year (often referred to as 'actual').

A sole trader with a 30 April year end will find that his taxable profits for 2024/25 are based on:

- 1/12th of his profits for the year ended 30 April 2024; plus
- 11/12ths of his profits for the year ended 30 April 2025,

whereas, under the previous regime, his taxable profits for 2024/25 would have comprised his profits for the year ended 30 April 2024.

2023/24 represents a complicated transitional year in which the changeover starts.

The first element in the calculation is the level of the trader's profits measured on the current year basis. Let us assume that this is for the year ended 30 June 2023 (known as the 'standard part').

To this must be added the profits of the so-called 'transition part'. The transition part runs from the end of the standard part (1 July 2023) through until 5 April 2024.

In order to alleviate the impact of additional profits being brought into account, two adjustments are available for taxpayers:

- they can deduct any overlap relief from their transition part profits; and
- they can spread any remaining transition profits evenly over a five-year period, starting with 2023/24.

Note that an election can be made to accelerate the taxation of the spreading. It may be for any amount of the transition profits not previously charged to tax.

In 2023/24, businesses must offset all the overlap relief to which they are entitled. If they do not do so, there will be no further opportunity to relieve this amount.

If a business is unaware of their overlap relief entitlement, the easiest way to find this information is to use HMRC's special online form available at www.gov.uk/guidance/get-your-overlap-relief-figure.

We can now turn to the main purpose of this session.

Extended loss carry-back

If deducting overlap relief creates (or increases) a loss in 2023/24, an extended loss carry-back is available. Effectively, the business can apply the terminal loss relief legislation as though the owner had ceased to trade on 5 April 2024. This allows the loss to be carried back for up to three previous tax years on a LIFO basis.

However, it goes without saying that only the part of the loss which arises from the overlap relief element qualifies for this extended carry-back. Any remaining loss is dealt with using the normal loss relief rules.

It should be emphasised that treatment of this overlap relief loss as a terminal loss is an optional exercise. The businessman is able to:

- claim terminal loss relief; or
- carry his loss forward; or
- claim sideways loss relief (subject to the usual constraints).

Example

Gary has been trading for a number of years. His recent adjusted results are:

		£
Year ended 30 April 2023	Loss	(28,000)
Year ended 30 April 2024	Loss	(33,000)

His overlap relief brought forward amounts to £26,750.

The calculation of Gary's loss relief position for 2023/24 proceeds as follows:

	£
Standard part (year ended 30 April 2023)	(28,000)
Transition part:1 May 2023 – 5 April 2024 (11/12 x 33,000)	(30,250)
	(58,250)
Overlap relief	(26,750)
	£(85,000)

Out of this total of £85,000, Gary can make a terminal loss relief claim in the sum of £26,750, with the balance of £58,250 being treated as a normal trading loss.

Contributed by Robert Jamieson

LLP in business and tax transparent (Lecture B1466 – 20.56 minutes)

Summary - The LLP was carrying on a "business" with a view to profit and so satisfied s.59A(1) TCGA 1992 at the relevant time. There was therefore no tax to assess relating to a transfer of loan notes to the LLP by its members.

Gregory Hutchings, who worked in senior positions at Tomkins Plc until 2000, was the trustee of three family trusts. The trusts and GCH Corporation Ltd, which Gregory Hutchings controlled, built up substantial shareholdings in Tomkins Plc.

When a possible takeover of Tomkins Plc was announced, Gregory Hutchings sought advice on the sale of the trusts' and company's shares and decided to incorporate GCH Active LLP. The LLP's activities were limited, but it did purchase five unconnected shareholdings (two of which were disposed of shortly afterwards) financed by (what was subsequently documented as) a £200,000 loan from Gregory Hutchings.

When the takeover of Tomkins Plc completed:

- the trusts exchanged all their Tomkins Plc shares, and the company some of its shares, for loan notes issued by the buyer;
- the trusts and the company, as members of the LLP, sold the notes to the LLP at a 2% discount to face value;
- the LLP was then liquidated, redeeming the notes and selling its remaining three shareholdings.

The use of the LLP in this way was part of a tax mitigation strategy, which was disclosed to HMRC under the disclosure of tax avoidance scheme (DOTAS) rules. In summary, the intention was there would be no tax on capital gains on the transfers to the LLP, as it was tax transparent at that point; but it would become opaque on appointment of the liquidator, meaning it would be treated as having acquired the loan notes at the price paid by the LLP.

The result was an estimated £2.7 million tax saving (dwarfing the LLP's profits from other activities).

It was common ground that, if the LLP was tax transparent at the time of the notes transfer, the transfers were contributions of capital (rather than disposals of the notes) and that no additional tax would be payable by the appellants. This turned on whether the LLP was carrying on a trade or business with a view to profit.

HMRC said the LLP was not carrying on a trade or business and raised assessments.

Decision

Although the LLP was established and liquidated primarily for tax purposes, the First Tier Tribunal found it was also established as a vehicle for an intended hedge fund-type business to which Gregory Hutchings devoted some time.

The First Tier Tribunal had little hesitation in concluding that the LLP was not trading. It then considered the case law drawn from various contexts on the meaning of 'business' and the statutory context in this case. It concluded that 'business' in the context of s.59A TCGA 1992 should be given its ordinary commercial meaning, which is broader than the meaning of 'trade' and does not exclude investment business. The First Tier Tribunal held that the LLP was in business and had a subjective intention to make a profit. It was therefore tax transparent at the time of the transfers of the notes, which were treated as tax neutral contributions of capital to the LLP by its members.

Note: a proposed change to the rules, effective for liquidations that commence on or after 30 October 2024, was announced in the Budget which inserts new s.59AA TCGA and deems that a disposal arises when an LLP is liquidated and assets a member has contributed are disposed of to the member, or to a company or other person connected to them.

GCH Corporation Ltd and others v HMRC (TC09318)

Adapted from the case summary in Tax Journal (1 November 2024)

Spotlight 65 – GDPR provision (Lecture B1466 – 20.56 minutes)

HMRC has highlighted that some tax agents are advising companies how to reduce their corporation tax liability by claiming a deduction for a GDPR provision in the company's accounts. HMRC do not believe that these claims are legal and will challenge those making such claims. Where such invalid claims have been made, HMRC may seek to recover the tax and charge both interest and penalties.

The spotlight includes HMRC's guidance on the action that a taxpayer should take if they have made an invalid claim.

How the provision works

Companies are being incorrectly advised that:

- given the risks involved for non-compliance with the GDPR rules, companies should set aside a sum to provide for a potential breach of the GDPR rules.

- this accounting provision should be included in the latest tax return to reduce the tax payable for the period, or alternatively, the provision should be made by amending the previous year’s tax return and so generating a tax refund.

HMRC say that agents are charging fees for this advice, calculated as a percentage of the tax saving/repayment, sometimes in excess of 30%. By the time HMRC make enquiries, the agent has disappeared.

On occasion, agents may try to link the claims to the process for claiming Research & Development tax credits, in order to falsely inflate the size of the R&D credit.

HMRC action against agents

Tax agents that encourage or facilitate taxpayers making false claims for expenses, rebates, or tax credits may face penalties, suspension of their ability to make claims on behalf of clients and prosecution.

https://www.gov.uk/guidance/general-data-protection-regulation-gdpr-provision-used-to-reduce-tax-liability-spotlight-65

Spotlight 66 - 'The Partnership Model' (Lecture B1466 – 20.56 minutes)

HMRC is aware of a tax avoidance scheme called 'The Partnership Model', targeted at companies who have employees and designed to avoid the payment of Corporation Tax, as well as the PAYE deduction of Income Tax and NICs from their employees.

How the arrangements claim to work

An employee enters into an agreement, whereby their employment contract can be changed or terminated in exchange for a compensation payment.

An LLP is created and the employee becomes a partner of the LLP.

The employee's employment is terminated and/or varied under the terms of the agreement and compensation payments are 'made' to the employee but in reality, the employee never receives these payments as they are treated a capital contribution to the LLP.

The LLP pays the employee as a partner in the LLP, allowing the company to disguise employment income and reduce its tax and national insurance liability.

HMRC's view is that this scheme does not work. Under the scheme, users continue to be employees and payments made to them from the company should be treated as taxable employment income.

https://www.gov.uk/guidance/limited-liability-partnerships-arrangements-used-to-disguise-employment-income-spotlight-66

New guidance on R&D

HMRC has published three new guidance pages and updated one other on research and development (R&D).

HMRC has published the following new guidance:

1. Work out your Research and Development tax relief
2. Check what Research and Development (R&D) costs you can claim
3. Make a claim for R&D tax relief on your company tax return

'Tell HMRC you want to claim Research and Development (R&D) tax relief' has been updated to provide clarification and improved explanations for when to submit the form, working out the claim notification period, and on 'what you need to do next'.

https://www.gov.uk/guidance/work-out-your-research-and-development-tax-relief?

https://www.gov.uk/guidance/check-what-research-and-development-rd-costs-you-can-claim?

https://www.gov.uk/guidance/make-a-claim-for-rd-tax-relief-on-your-company-tax-return?

https://www.gov.uk/guidance/tell-hmrc-that-youre-planning-to-claim-research-and-development-rd-tax-relief?

Subsidised R&D expenditure or not? (Lecture B1466 – 20.56 minutes)

Summary – With a commercial contract between the parties in place and no clear link between the price paid by the client and the expenditure incurred, R&D relief was available.

Collins Construction Limited was an SME that designed and carried out refurbishment projects for large companies. Work tenders did not specifically include any research and development work but, on occasions, the company had to develop an innovative solution to deal with a specific problem. One example cited was an issue with reverberation, for which a bespoke method was devised. There was no dispute that this (and similar) expenditure had been incurred on research and development.

The dispute was over whether relief was prevented because the expenditure was subsidised.

S.1138 CTA 2009 defines subsidised expenditure as being expenditure that falls into one of three categories, being broadly where the expenditure is met by the provision of State Aid, a grant/ subsidy or the 'extent that it is <u>otherwise</u> met directly or indirectly by a person other than the company'.

HMRC claimed that the company's expenditure was subsidised as it fell into the third of these categories. The company incurred the R&D expenditure in the course of providing construction services to its client and was paid by the client. The R&D costs were effectively met by the end users and so the expenditure was subsidised.

The company argued that the contractual bargain with its clients was for an agreed price for carrying out works. It had to meet any costs of the R&D work out of the contract price and would often not know whether or not expenditure on R&D had to be incurred until work started. The company did not have a contract under which it was reimbursed by its clients for incurring specific costs.

Decision

The First Tier Tribunal agreed with the company, stating that a very similar matter had come before a differently constituted tribunal in Quinn [2021] UKFTT 437 (TC). Although not bound by that decision, the principle of judicial comity meant that it should be followed unless a tribunal considered it to have been wrongly decided. Here, it did not believe that the decision in Quinn [2021] UKFTT 437 (TC) was wrong.

The key question was what was meant by the word 'otherwise'. In Quinn [2021] UKFTT 437 (TC), the First Tier Tribunal had interpreted those words narrowly, saying that they are meant as a sweep up provision for situations similar to state aid or grants and not as applying more generally to commercial situations.

In adopting the same approach, the First Tier Tribunal agreed that the expenditure incurred by the company had not been subsidised and therefore there was no restriction on the availability of relief. The company's "clients (did) not agree to pay or reimburse the appellants for particular costs… (and the company) did not agree to carry out the relevant R&D on being paid or reimbursed by the client for doing so."

Collins Construction Limited v HMRC (TC09332)

Adapted from the case summary in Tax Journal (8 November 2024)

Claims and conditions for enhanced rate of AVEC

New regulations set out conditions for the enhanced rate of audio-visual expenditure credit (AVEC) and the date from which applications for low-budget certificates can be made.

The 53% enhanced AVEC rate is available for films which qualify as British under Schedule 1 Films Act 1985 and which also meet the budget and creative conditions tests.

Conditions

The Corporation Tax (Certification as Low-Budget Film) Regulations, SI 2024/1009, set out the:

- budget condition;
- creative connection condition; and
- necessary supporting evidence for those conditions.

The regulations provide that:

- to qualify for the enhanced AVEC rate, the film's total core expenditure must not exceed £23.5m (enhanced AVEC is available in relation to £15m of the total);
- in relation to the requirement for a director or scriptwriter to be a British citizen or otherwise resident in the UK, where there are multiple directors or screenwriters the test will apply to the lead individual in the role; and
- applicants will be required to provide certain information to substantiate the above requirements.

The government's policy aim here was to incentivise UK independent film production by providing a higher rate of relief.

Application date

The Finance (No. 2) Act 2024 (Applications for Certification as Low-Budget Film: Appointed Day) Regulations, SI 2024/1010, specify 30 October 2024 as the 'day before which an application for a low-budget certificate may not be made' (as per s.15(4) F(No 2)A 2024). In other words, applications for low-budget certificates (which are required for the enhanced AVEC), can be made from 30 October 2024 onwards.

Article from Tax Journal (18 October 2024)

Corporate re-domiciliation and uplift in thresholds

In October 2024, an Independent Expert Panel published its report setting out its proposals for a UK corporate re-domiciliation regime.

A UK corporate re-domiciliation regime makes it possible for companies to move their place of incorporation to the UK, making it easier to relocate and so strengthen the UK's position as a global business hub and an open, competitive free-market economy.

The report considers how various components of a new regime could work and looks at both inward and outward re-domiciliation to the UK, together with the information and procedural requirements that would apply. In addition, the report discusses changes:

- that may be required for tax legislation (section 6);
- for accounting purposes and distributions (section 7);
- to the insolvency regime and creditor protection (section 8).

Finally, the report details changes that will be needed to the Companies Act 2006 and additional powers that will be needed for the Registrar of Companies.

The government welcomed the panel's report and intends to consult in due course on the design of a proposed regime.

In a written statement by Jonathan Reynolds, Secretary of State for Business and Trade, he welcomed publication of the report, and also announced:

> 'I can confirm that my department will lay legislation by the end of the year that will save companies £240m per year by removing redundant reporting requirements and uplifting the monetary size thresholds for micro-entities, small and medium-sized companies, as well as making technical fixes to the UK's audit framework.'

https://assets.publishing.service.gov.uk/media/670c01eb3b919067bb48308a/corporate-re-domiciliation-report-of-the-uk-independent-expert-panel.pdf

https://questions-statements.parliament.uk/written-statements/detail/2024-10-14/hcws126

Proposal to revise DAC 9

The GloBE Information Return sets out a standardised information return to facilitate compliance with and administration of the GloBE Rules. It contains the information a tax administration needs to perform an appropriate risk assessment and to evaluate the correctness of a Constituent Entity's Top-up Tax liability.

The EC has published a proposal to revise DAC 9 to implement the OECD GloBE Information Return, enabling central filing via a top-up tax information return as provided for under the Minimum Tax Directive.

The amendments would set up a system for tax authorities of Member States to exchange information with each other and introduce a standard form in line with the form developed by the Inclusive Framework of the OECD and the G20.

Tax Journal (8 November 2024)

New patent box guidelines

On 7 November 2024, HMRC issued new Patent Box compliance guidelines which include information on:

- common errors found in Patent Box computations

- best practice on what to include with the tax computation
- best practice on record keeping for the Patent Box

The guidelines cover who can benefit from the regime, a recommended approach to computations, avoiding common errors, record keeping and what information to include.

https://www.gov.uk/government/publications/help-with-patent-box-computations-gfc9/

VAT and other indirect taxes

Speedy payment discount (Lecture B1470 – 24.53 minutes)

Summary – VAT was payable on the full amount received from customers who did not accept the taxpayer's 24-hour Speedy Payment Discount offer.

TalkTalk Telecom Limited supplied fixed and mobile telephone, paid TV and broadband internet access services to retail and commercial customers.

Between 1 January and 30 April 2014, the company offered most of its retail customers a 15% Speedy Payment Discount on certain services, provided they settled their bills within 24 hours of receiving them. Only around 3% of customers actually paid within the 24 hours, the remaining 97% paid the full amount billed, mainly by direct debit.

The telecoms company believed that under the prompt payment discounts legislation in place at the time (Para. 4(1) Sch. 6 VATA 1994), VAT should be accounted for on the basis that the VAT consideration was the figure net of the discount, irrespective of whether or not discounted payment was received within the 24 hours specified.

HMRC disagreed and raised an assessment for £10.6 million believing that the Speedy Payment Discount offer only reduced the VAT consideration where customers had actually paid the reduced amount.

The First Tier Tribunal found that none of the supplies made by TalkTalk Limited came within paragraph 4(1) because:

> "(1) In relation to services billed in advance, there were no terms 'allowing a discount for prompt payment'. This was because the contract was only varied …. if the customer accepted the SPD offer for that particular month by making the payment within 24 hours. The variation of the terms happened simultaneously with the payment, and there was no term allowing for a discounted payment to be made on a future date.
>
> (2) In relation to services billed in arrears, the SPD (Speedy Payment Discount) was an offer by TalkTalk to accept a lower sum with an earlier payment date to discharge a pre-existing contractual obligation and was thus a post-supply rebate of the consideration already due. Again, Para 4(1) did not apply."

TalkTalk Limited appealed to the Upper Tribunal.

Decision

The Upper Tribunal found that none of TalkTalk Limited's original Terms and Conditions had changed:

- For customers who did not take up the offer, the Terms and Conditions did not change and their services were not supplied on terms allowing a discount for prompt payment;

- For customers who took up the discount, their Terms and Conditions only changed when the discount offer was accepted by customers and they paid within 24 hours.

As the Tribunal stated:

> "I do not consider that the SPD offer was a unilateral change to the Ts & Cs because it did not purport to make any changes to them and no revised Ts & Cs were sent to the customers or published on the website which incorporated the SPD offer."

The company was therefore required to account for VAT on the full amount received from customers who did not accept the SPD offer.

Note: Paragraph 4 was amended with effect from 1 May 2014 stating that the consideration for a supply on terms which allowed a discount for prompt payment was only treated as the discounted amount where, among other conditions, payment was made in accordance with the terms that allowed the discount. Clearly in TalkTalk Limited's case, only customers who actually settled within 24 hours received those terms.

TalkTalk Telecom Limited v HMRC [2024] UKUT 00284 (TCC)

Second-hand margin fraud (Lecture B1470 – 24.53 minutes)

Summary – With the help of a number of foreign tax authorities, HMRC recovered £8.5 million in VAT and penalties from a watch retailer who had been using the second-hand margin scheme to avoid tax on the sale of imported, new watches.

Ancient & Modern Jewellers Limited operated as a watch dealer from retail premises open by appointment only and through a website iconicwatches.co.uk. The business had storage facilities separate to the retail premises and it was these storage facilities that were the company's registered place of business. Zachary Coles was a director.

In 2014 HMRC were contacted by the Italian tax authorities, requesting information about the company's transactions with an Italian supplier. A further request followed in 2017, when the Italian authorities requested that HMRC trace the supply of watches from an Italian company which had issued invoices in the names of at least six different companies.

HMRC then monitored Ancient & Modern Jewellers Limited monthly, who then identified record keeping supplier identification problems.

Ten other overseas tax authorities approached HMRC for information and, following a lengthy investigation, HMRC concluded that the company and Zachary Coles had been deliberately claiming that new watches, imported from abroad, were second-hand and had had been accounting for VAT under the second-hand margin scheme rather than on the full price paid for the watches.

HMRC issued best judgment assessments on the company for £5 million and a personal liability notice to Zachary Coles for £2.8 million (56% of the tax considered lost through the company's deliberate, but not concealed, conduct).

The company and director appealed arguing that the assessments were not carried out under HMRC's 'best judgement' principles and were 'overstated'.

Decision

The First Tier Tribunal stated that Zachary Coles was not a reliable witness but it did accept that Zachary Coles was familiar with the terms and operation of the margin scheme as under cross-examination he had confirmed that:

- he had worked in the business with his parents for many years;
- the business traded in second hand goods;
- familiarity with the scheme was essential.

From the evidence presented, the First Tier Tribunal concluded that the company was not entitled to use the second margin scheme for a number of reasons and that Zachery Coles knew this, but deliberately chose to do so.

Most significantly the First Tier Tribunal established that although some watches were second hand, the majority were new. Zachary Coles mis-recorded purchases in the stock book, showing new purchases as 'unworn' and then accounting for all unworn stock as preowned. Further, watches were purchased as intracommunity supplies or imports, which are not eligible for the margin scheme.

Despite claims by the appellant, the First Tier Tribunal did not find HMRC's behaviour to be "vindictive, dishonest or capricious". The HMRC officer was diligent and thorough and the Tribunal stated:

> "HMRC had legitimate concerns regarding A&M's use of the margin scheme generally and specifically and there was a wider concern that A&M were participants in fraudulent supply chains. We consider that the investigation was proportionately carried out considering these concerns and the Assessments raised in exercise of best judgment."

By recording all purchases from certain suppliers in the stock book, the company deprived themselves of the entitlement to use the margin scheme in connection with any purchases of used watches made from those suppliers.

With discrepancies between the annual accounts and no other evidence supplied by the appellant, the Tribunal concluded that it was entirely reasonable for HMRC to extrapolate their findings to all periods between 1 September 2014 to 31 August 2018.

The Tribunal concluded that HMRC's best judgment assessment was accurate and not overstated and that Zachary Coles had acted deliberately.

The appeal was dismissed.

Ancient & Modern Jewellers Limited and Zachary Coles v HMRC (TC09270)

High street jeweller (Lecture B1470 – 24.53 minutes)

Summary – Input VAT deduction was denied as the taxpayer "knew or should have known" that the supplies were connected with the fraudulent evasion of VAT.

Microring Limited was a long-established high street jeweller business, operating from a shop in North West London. The company sold retail jewellery including Asian jewellery such as bangles, rings, and earrings. The company accepted gold in part-exchange but did not purchase it outright.

Following a visit, in 2006 HMRC wrote to the company confirming their discussions that the jewellery trade was an area that had been affected by "MTIC" fraud. The letter enclosed a copy of HMRC's Notice 726 *Joint and several liability for unpaid VAT*.

In 2013, HMRC revisited the company and noted that they had been told that the company had decided to expand into the scrap metal business. They had no experience in this market but were intending to buy and sell on a back-to-back basis copper cathode, bright wires, etc. HMRC advised the company that this trade sector was "tainted with fraud" and that the company should safeguard its interests as it would be exposed to "risks". HMRC gave the company a leaflet called *How to spot missing trader VAT fraud*. Although Notice 726 refers to specified goods, the company was advised that "it can apply to any commodity". HMRC also referred the company to section 6 of Notice 726, "which describes the checks they can apply".

This case related to ten back-to-back purchases and onward sales of sliver between October 2015 and January 2016. The company made a 1% margin and did not pay its supplier until it had been paid by the customers. No meaningful checks were made on the parties involved.

According to VAT records, the company's VAT "outputs" were just over £1 million in the 12/15 VAT quarterly period, just over £0.5 million in the 03/16 VAT quarterly period, and just £37,000 in the next period, 06/16.

HMRC raised assessments denying input tax of £310,184 claimed by the company in the 12/15 and 03/16 VAT quarterly accounting periods. HMRC submitted that the input tax claims were connected with fraudulent evasion of VAT and the company either knew, or should have known, this.

Decision

The company had taken little notice of the warnings that HMRC had previously provided. And stated:

> "The purchases and sales were "small-margin, money for nothing" transactions, buying from companies of which Micro knew nothing of substance, in a business area divorced from Micro's principal business"

The Tribunal continued:

> "…the transactions therefore bore a number of the tell-tale signs of connections with VAT fraud, of which Micro had been recently informed in its dealings with HMRC."

In the First Tier Tribunals view, there was no reasonable explanation for these circumstances other than that the purchases were connected with VAT fraud. The company should have known this and the appeal was dismissed.

Microring Limited v HMRC (TC09303)

DIY Housebuilder claims (Lecture B1470 – 24.53 minutes)

Summary – The taxpayer's claim under the DIY Housebuilder's scheme in respect of his conversion of a barn into a dwelling was allowed, but he was denied a second, later claim in respect of the two-bedroom extension that was undertaken.

Planning permission was granted for two developments. The first was for the "conversion of a barn into a dwelling". Although planning permission included a small bedroom extension, this extension was not undertaken. A completion certificate was issued without the bedroom and the taxpayer successfully claimed under the DIY Housebuilder scheme.

The second was for an "extension to existing barn conversion". Brian Lawton sought to extend the barn with a single-storey extension to now include two bedrooms rather than the initial one. He claimed that he submitted evidence to HMRC and they accepted that the property was uninhabitable and had not been lived in during the phase between the two parts of the development. He made a second claim under the VAT Scheme which was refused as HMRC stated that only one claim could be considered in relation to the first application and that the claim in relation to the second application was ineligible as it was an extension to an existing dwelling which did not qualify for a VAT refund.

Decision

Brian Lawton had decided to seek a completion certificate on the first application before all the stages specified in that application had been completed. By doing so, he confirmed that the first application development had been completed.

As the law only allows one claim, the First Tier Tribunal considered that this first DIY claim was the only claim that could be made for "the conversion of a barn to a dwelling".

HMRC were entitled to insist that only one claim was allowed as there had been no repayment in error. No invoices or work carried out before the 1st claim were submitted late or omitted from the first claim

HMRC's decision to refuse the second claim relating to the extension was correct.

The appeal was dismissed

Brian Lawton v HMRC TC09309

Reasonable excuse for late VAT returns (Lecture B1470 – 24.53 minutes)

Summary – The taxpayer had a reasonable excuse for submitting her VAT returns late as she had taken reasonable care to avoid her bookkeepers' failings and had been given incorrect advice by HMRC.

Sandra Krywald, a solicitor, had been subject to the default surcharge regime since January 2021. This case concerned the new points-based penalty system applying to late returns and payments from 1 January 2023. It related to VAT periods 5/23, 8/23 and 11/23.

She had outsourced her bookkeeping services to a bookkeeping firm, who provided the figures needed to enable her to complete and submit her VAT returns.

During COVID, with her allocated bookkeeper vulnerable and working remotely from home, the relevant figures were produced late. Further, Sandra Krywald believed that the figures supplied may well have been wrong and so was reluctant to sign a VAT return declaring that the figures were correct. However, she did make monthly payments on account of the VAT.

HMRC advised that in order to submit a VAT return she needed to have "opening balances, but when a replacement bookkeeper was unable to resolve the position, she engaged the services of a VAT specialist, who confirmed that HMRC’s advice was incorrect that VAT returns could be submitted based on the turnover for each period.

HMRC centrally assessed Sandra Krywald to VAT under the new late payment penalty regime, with penalties based on HMRC's estimate of the VAT due for the relevant periods.

Sandra Krywald appealed against the late submission points and the late payment penalties, arguing that she had a reasonable excuse as she had relied on the bookkeeping firm to supply her with competent staff but once she realised that their figures were inaccurate, she made every effort to resolve the situation.

HMRC argued that under the legislation reliance on another person is not a reasonable excuse, and therefore the penalties were correctly charged.

Decision

Under the law, a taxpayer is not liable to either penalty points or a financial penalty for late submission, or for a late payment penalty, if they can establish that they had a reasonable excuse for their failure and put that failure right without unreasonable delay after the excuse has ended. However, it is statutorily provided that reliance on another person can only be a reasonable excuse if the taxpayer took reasonable care to avoid the failure and then remedied the failings without unreasonable delay once the excuse ceased.

The First Tier Tribunal found in the taxpayer’s favour. Sandra Krywald had challenged the validity of the first bookkeeper’s figures and was entitled to believe that the second bookkeeper would resolve the position. Seeking advice from the VAT specialist, she had taken reasonable care to sort out the issue and indeed highlighted HMRC’s failings. This meant that she had a reasonable excuse up until this time. The First Tier Tribunal found that, by submitting her VAT returns in June and July 2024, she had remedied the failure to submit her returns without unreasonable delay.

The First Tier Tribunal went on to consider whether, had there not been a reasonable excuse, were there ‘special circumstances’ which would have resulted in the penalties being reduced to zero. The First Tier Tribunal concluded that the combination of the bookkeepers’ failings together with HMRC’s incorrect advice had led to far more work than would normally have been required and had resulted on the late submissions. The First Tier Tribunal considered this to be ‘special circumstances’.

The appeal was allowed.

Sandra Krywald v HMRC (TC09312)

Electric charging points (Lecture B1470 – 24.53 minutes)

Summary – The supply of electricity via third party operators was a supply of goods taxable in Sweden, while the fixed monthly fee for access to the network of charging points was a separate supply taxable in Germany.

Digital Charging Solutions GmbH is a German company, that supplies electric vehicle users in Sweden with access to a network of charging points.

The company provides real-time information on pricing and the availability of charging points, but the company has contracts with third party operators who provide the charging points. A fixed fee is payable monthly for this service.

Digital Charging Solutions GmbH customers choose to access charging points with a card or via an app, which registers their use with the relevant third-party operator. The operators invoice Digital Charging Solutions GmbH monthly, who then invoice their customers for the electricity used as well as the fixed fee, which is charged regardless of whether any electricity is actually supplied in the month.

On 8 April 2022, Skatterättsnämnden (Revenue Law Commission, Sweden) issued a ruling stating that the supply made by Digital Charging Solutions GmbH constituted a complex transaction principally characterised by the delivery of electricity to users and that the place of delivery was to be regarded as being in Sweden.

Digital Charging Solutions GmbH argued that there were two separate supplies, being a supply of electricity and a supply of services to use the network. This supply of services was supplied where Digital Charging Solutions GmbH was located, in Germany. Consequently, the company claimed that only the supply of electricity should be taxed in Sweden.

Two questions were referred to the CJEU for a preliminary ruling:

1. Does a supply to the user of an electric vehicle consisting of the charging of the vehicle at a charging point constitute a supply of goods under [Article] 14(1) and [Article] 15(1) of [Directive 2006/112]?

2. If yes, is such a supply then to be deemed to be present at all stages of a chain of transactions which include an intermediary company, where the chain of transactions is accompanied by a contract at every stage, but only the user of the vehicle has the right to decide on matters such as quantity, time of purchase and charging location, as well as how the electricity is to be used?’

Decision

The supply of electricity is deemed to be a supply of goods (Article 15 PVD). The CJEU found that the supply of electricity to the user of an electric vehicle using a charging point fell within this Article.

Digital Charging Solutions GmbH was not independently buying any electricity but was acting as an intermediary, on behalf of its customers who determined when, where and how much electricity was bought.

The electricity was supplied initially by the third-party operators to Digital Charging Solutions GmbH and then by Digital Charging Solutions GmbH to its customers.

Consequently, the provisions of Article 14(2)(c) applied to treat the supply as a supply of goods both to and from the intermediary.

The CJEU also considered whether this was a single or mixed supplies. As there was a fixed monthly fee that was payable irrespective of whether any electricity was actually bought, the CJEU concluded that the economic reality was that there were two separate supplies. The fixed fee was neither ancillary to the supply of electricity nor inseparable from this supply. This was a separate supply of services that was not taxable in Sweden.

CJEU (Case C-60/23): Digital Charging Solutions GmbH

Independent Schools Council challenges VAT on school fees

The Independent Schools Council (ISC) is to launch legal action against the government's decision to levy VAT on independent school fees.

The ISC, an umbrella body for seven associations representing independent schools, will be working with human rights barrister Lord Pannick KC, alongside Paul Luckhurst from Blackstone Chambers and the legal firm Kingsley Napley.

The case will centre around breaches of the European Convention on Human Rights and the Human Rights Act 1998.

It will be separate from other litigation, though ISC will be liaising with other third-party groups.

Julie Robinson, CEO of ISC, said:

> "This is a decision that has not been taken lightly and has been under consideration for many months. At all points throughout this debate, our focus has been on the children in our schools who would be negatively impacted by this policy. This focus remains and we will be defending the rights of families who have chosen independent education, but who may no longer be able to do so as a direct result of an unprecedented education tax."

https://www.isc.co.uk/media-enquiries/news-press-releases-statements/isc-to-take-legal-action-against-vat-on-fees-policy/

Purchase and sale of alcohol

Summary – The company's alcoholic goods had not been moved to the UK, either at the time of its acquisition, or at the time that it was sold to the company's customers.

Mohammed Zaman was the sole director and shareholder of Zamco Ltd, a company that bought and sold alcohol.

The issue to decide in this case was whether Zamco Ltd had acquired alcohol at a location outside the United Kingdom and brought this alcohol to the UK in the course of its business for onward sale. If the answer to that question was "yes", a charge to VAT should arise for Zamco Ltd but if the answer was "no", then no VAT charge would arise. HMRC had raised assessments and issued penalties on the basis that VAT was so payable.

Zamco Ltd did not pay the VAT or penalties and also did not appeal.

HMRC issued Mohammed Zaman a personal liability notice on the basis that there were 'deliberate' inaccuracies in the VAT returns for the relevant period, which were 'attributable' to him.

The case was originally heard in 2021, when the First Tier Tribunal found for the taxpayer who had argued that his company had not imported goods into the UK and so the VAT assessments, penalties and the personal liability notice should be quashed.

The case was reheard by the First Tier Tribunal in 2023, after the Upper Tribunal had remitted the case back on the grounds that the First Tier Tribunal had made an error in law by finding that HMRC had not discharged its burden of proof. The Upper Tribunal found that while the burden of proof was on HMRC to establish the validity of a personal liability notice, it was for the trader to provide evidence that proved HMRC's assessment was incorrect.

The case was reheard in 2023, with the First Tier Tribunal again finding in the taxpayer's favour.

HMRC appealed to the Upper Tribunal once more, arguing that the First Tier Tribunal's decision was 'perverse'. The Tribunal had made a decision which, by applying the relevant legal principles and in the light of its findings of primary fact, no reasonable tribunal could have reached. The decision should be set aside (Edwards v Bairstow [1956]).

Decision

The Upper Tribunal stated that to be successful in its appeal, HMRC had set themselves a 'very high hurdle' as it was well established that it was for the fact-finding First Tier Tribunal to decide how much weight should be given to factual findings.

The Upper Tribunal stated that the First Tier Tribunal had found that, on the balance of probabilities, the alcoholic goods were located outside the UK at the time of acquisition by Zamco Ltd and at the time of their on-sale.

In reaching this decision the First Tier Tribunal had relied on documentation supplied and the fact that Zamco Ltd had no premises in the UK to store alcoholic goods.

The Tribunal had accepted that it was 'likely' that 'illicit activity' was involved but it could not say where that activity took place. This was not enough to make a finding that Zamco Ltd had a role of arranging or overseeing alcohol smuggling into the UK.

Sterling cash deposits and UK connections were insufficient and not specific enough to prove that on the balance of probabilities, the alcoholic goods had moved from France/Germany to the UK at or before their on-sale to customers. The documentation indicated that the goods were in French or German warehouses and, on the balance of probabilities it seemed unlikely that the company was smuggling as the company's margins of 2-3% were likely too small for the risks involved in such activity.

The Upper Tribunal acknowledged that HMRC would have preferred the First Tier Tribunal to have placed no weight on the evidence or documentation supplied. However, there was no evidence that the documentation had 'in effect' been fabricated.

The Upper Tribunal found that while the First Tier Tribunal could have reached the opposite conclusion, it had not made an error in law in reaching the one it had.

HMRC's appeal was dismissed.

HMRC v Mohammed Zaman [2024] UKUT 00278 (TCC)