Tolley®CPD

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CONTENTS

Personal tax

Subsistence allowances (Lecture P1112 – 16.58 minutes)

Employees are often required to travel on business and in doing so will incur a range of expenses. Where the employer receives a receipt for work related expenses they can be reimbursed without any tax implications.

In an attempt to simplify business travel expenses, employees can be reimbursed using HMRC statutory rates – commonly known as statutory tax exempt payments. By paying these rates, the employer has no reporting or payroll implications. Do remember that where an employer pays a rate above the HMRC's statutory exempt amount, the whole amount is normally subject to both income tax and NIC through payroll.

Incidental overnight expenses

When travelling on business, the employee is likely to incur certain incidental personal expenses when staying away from home. These might include laundry costs, morning newspaper or drink from the hotel room mini-bar.

HMRC rates allow tax-free payments of £5 per night when staying away in the UK, increased to £10 per night when staying abroad. Should his employer pay at a higher rate, then 100% of the amount paid is taxable though payroll.

Benchmark scale rates for meals

Where an employee provides receipts for subsistence, provided that the employer is confident that it is a business expense incurred wholly, exclusively and necessarily in the performance of their duties, then the costs can be reimbursed tax free.

Employers can choose to pay or reimburse expenses using HMRC's benchmark rates without seeking HMRC approval. Expenses claimed in this way are both tax and NIC free. These rates are particularly useful where an employee fails to provide receipts.

If an employer:

- wants to pay rates that are higher than the standard HMRC rates, they will need to seek HMRC approval, providing sampling to prove to HMRC that the higher rate is appropriate;

- pays a higher rate but without HMRC approval, then the excess over HMRC's published rate is liable to tax and NIC.

The HMRC rates payable provided that the employee is on a qualifying journey are:

- Minimum of 5 hours away from workplace - £5 (+ £10 if working after 8pm)

- Minimum of 10 hours away from workplace - £10 (+ £10 if working after 8pm)

- Minimum of 15 hours and still away at 8pm - £25

The rates cover food and drink but do not include just a drink in a pub or a snack bar.

Qualifying journey

To qualify for the benchmark rates, the travel must be carried out in the performance of his or her duties or when travelling to a temporary workplace on a journey that is not substantially ordinary commuting.

As already said the employee must be absent from their ordinary place of work for a continuous period of at least 5 or 10 hours and incurred a cost on a meal of food and drink after starting their journey.

Advisory fuel rates from 1 December 2018

These rates are used for company cars only, where employers reimburse employees for business travel based on miles that are recorded in their mileage log.

These rates are reviewed quarterly and the previous rates can be used for up to one month from the date the new rates apply.

Engine size	*Petrol - per mile*	*LPG - per mile*
1400cc or less	12 pence	8 pence
1401cc to 2000cc	15 pence	10 pence
Over 2000cc	22 pence	15 pence

Engine size	Diesel – per mile
1600cc or less	10 pence
1601cc to 2000cc	12 pence
Over 2000cc	14 pence

Hybrid cars are treated as either petrol or diesel cars for this purpose.

The Advisory Electricity Rate for fully electric cars is 4 pence per mile.

Approved mileage allowance payments

By contrast, where an employee uses their own vehicle on business journeys the following amounts can be claimed:

- Cars – the first 10,000 business miles per tax year are reimbursed at 45p per mile and 25p thereafter; there is a passenger rate payable to the driver of 5p per mile;

- Motorbikes – business mileage is reimbursed at a rate of 24p per mile;

- Bicycles - business mileage is reimbursed at a rate of 20p per mile.

Working from home allowance

Where an employer works from home, the employer may pay the employee a tax free amount of £4 per week or £18 per month without the need for supporting evidence. This is intended to cover light, heat and water. Where evidence can be provided to support a higher rate, this higher amount can be paid tax free provided that the evidence is retained. Without this evidence, the excess payment will be taxable through payroll.

To qualify, HMRC require that either the employee is working at home because:

- the equipment that they need is not available at the workplace; or
- they live too far from the workplace to travel their each day.

Where the employee chooses to work from home, the tax free allowance is not available.

Created from seminar by Alexandra Durrant

Beneficiaries of employer-provided pension benefits (Lecture P1113 – 4.48 minutes)

When an employer provides death-in-service benefits through a life assurance policy or offers retirement benefits through a qualifying relevant overseas pension scheme, the employee in question will usually name a beneficiary to receive any payment due on their death or to receive their retirement benefits.

Prior to the introduction of a new clause in the draft Finance Bill published on 6 July 2018, premiums paid into these schemes by the employer only represented a tax-free benefit for the employee if the named beneficiary was another employee or a member of the deceased employee's family or household (eg. spouse, civil partner, parents, children, dependants, domestic staff and guests).

For 2019/20 onwards, the clause updates the exemption in S307 ITEPA 2003 by extending the provision to include <u>any</u> named individual as the preferred recipient, irrespective of their relationship to the employee. In the words of HM Treasury, 'this ensures that employees throughout the workforce are treated fairly and proportionately with employees in marriage or with close family'.

The extended exemption will also allow employees to nominate a registered charity.

Contributed by Robert Jamieson

Draft Scottish Budget 2019/20 (Lecture P1111 – 19.04 minutes)

The draft Scottish Budget 2019/20 includes the following highlights:

1. The income tax higher rate threshold will remain frozen at £43,430 so widening the gap with the UK higher rate threshold, which will be £50,000 in 2019/20;

2. The additional dwelling supplement for land and buildings transaction tax will rise from 3% to 4% from 25 January 2019;

3. The LBTT non-residential transaction rates and thresholds will change with effect from 25 January 2019; the lower rate threshold will be reduced from £350,000 to £250,000 and at the same time, the rate will be reduced from 3% to 1%. The upper rate will increase from 4.5% to 5%.

Residential		Non-residential *		Non-residential leases	
Purchase price	Rate	Purchase price	Rate	NPV of rent payable	Rate
Up to £145,000	0%	Up to £150,000	0%	Up to £150,000	0%
£145,001 to £250,000	2%	£150,001 to **£250,000**	**1%**	Over £150,000	1%
£250,001 to £325,000	5%	**Over £250,000**	**5%**		
£325,001 to £750,000	10%				
Over £750,000	12%				

The Budget remains in draft until it is approved by the Scottish Parliament, which based on previous years is likely to be in February 2019.

news.gov.scot/news/tax-decisions-to-protect-public-services

Diving earnings (Lecture P1111 – 19.04 minutes)

Summary – Taxpayer's diving activities were treated as carrying on a trade and so could not constitute employment income for UK income tax purposes

Mr Fowler was a South African resident who worked as a diver. In 2011/12 and 2012/13, he worked as a diver in the UK continental shelf waters of the North Sea. He had no permanent establishment in the UK and was employed under an employment contract.

HMRC said the earnings were income from employment within Art 14 of the South Africa/UK double tax treaty and was therefore chargeable to UK income tax.

However, s15 ITTOIA 2015 deems divers who work on the continental shelf to be self-employed and so Mr Fowler believed that his income was trading profits covered within Art 7 of the UK/South Africa double tax treaty, making his earnings exempt from UK income tax because he had no permanent establishment in the UK

The First Tier Tribunal found in favour of Mr Fowler but the Upper Tribunal overturned the decision. Mr Fowler appealed to the Court of Appeal.

Decision

The Court of Appeal found that the effect of s15 ITTOIA 2005 was that, for all income tax purposes, including any double tax treaty, the taxpayer was treated as carrying on a trade. The fact that the taxpayer's earnings were from employment activities should be ignored and so did not fall within Art 14 of the treaty.

The income was not therefore taxable in the UK as it fell within Art 7 — business profits — meaning that the UK ceded its right to tax that income to South Africa because the taxpayer had no UK 'permanent establishment'.

The taxpayer's appeal was allowed.

Fowler v CRC, Court of Appeal

Adapted from case summary in Taxation (6 December 2018)

Ordinary residence (Lecture P1111 – 19.04 minutes)

Summary – The Upper Tribunal found that the taxpayer had been ordinarily resident for the purpose of s26 ITEPA 2003.

Mr Mackay was born and brought up in Australia. He spent the majority of his adult life living and working outside the UK. However, he married in the UK but continued to work abroad.

Mr and Mrs Mackay decided that they wanted their children to be brought up and educated in the UK and they decided that Mrs Mackay would return to the UK with the children and he would continue to work in Hong Kong. They bought a house in Surrey in 1997 and Mrs Mackay and the children moved there in July 1997.

In the period 2000 to 2004, when Mr Mackay was based in Hong Kong and Japan, Mr Mackay came to the UK every 4 to 6 weeks and stayed with his family.

In December 2004, Mr Mackay was posted to the UK and he returned to live with his family. His first role in London only involved spending 15% to 20% of his working days abroad. However his second role, from July 2005 to October 2007, involved 30% to 40% of travelling time abroad. Mr Mackay contended that in January 2005, his expectation had been that he would not be based in the UK for more than three years.

Both parties agreed that Mr Mackay was non- UK domiciled but UK resident in 2005/06, 2006/07 and 2007/08.

Mr Mackay said that as his intention was to continue to work in the UK for no more than three years, this meant that he was not ordinarily resident in the UK. HMRC disagreed. This decision was relevant to the application of s 26 on overseas workday relief, which applies to general earnings for a tax year in which the employee is resident, but not ordinarily resident in the UK.

Decision

Parliament did not enact a statutory definition of ordinary residence but has left it to the tribunals and courts to apply the common law definition of ordinary residence.

The suggestion in the former IR20 booklet that a three-year period was required did not reflect the law. The Upper Tribunal said that there is no “three-year rule”. It was possible to become ordinarily resident in as little as one year. The authorities cited by the First Tier Tribunal clearly indicate that there is no prescribed minimum period by which a taxpayer will become ordinarily resident in the UK. It is a question of fact to be determined in each case.

The Upper Tribunal agreed with the First tier tribunal that the UK was his base both for work and home life. It was to the UK he returned from holidays, from work and from travel. On an ordinary day you would find him at work in the UK or at home in the evening and at weekends. The Upper Tribunal found that the period for which Mr Mackay had intended to stay in the UK had been long enough for it to be regarded as 'settled'. He was ordinarily resident in the UK.

A Mackay v HMRC [2018] UKUT 378

Voluntary Class 3 – too late to pay (Lecture P1111 – 19.04 minutes)

Summary – Earnings from employments could be aggregated for class 1 and subsequent entitlement to contribution credit. Failing to receive deficiency notices allowed the taxpayer to pay class 3 voluntary contributions.

On 17 October 2014 Louise Willmott wrote to the Department for Work and Pensions (DWP) about a pension statement she had received. She was concerned that it was much less than she had expected and asked to add some qualifying years to increase it. She was referred by the DWP to HMRC's National Insurance Contributions Office for more information about Class 3 NICs.

HMRC explained that she had fallen below the lower earnings limit in a number of years. They explained that in each tax year a person is required to earn over the lower earnings limit in each week or month to make their earnings count for pension purposes.

Louise Willmott said that she had two employments for the disputed years and that if they had added both earnings together, they would have exceeded the lower limit. HMRC argued that they could not be aggregated.

HMRC also said that she was too late to pay Class 3 voluntary contributions. HMRC claimed to have sent her deficiency notices for the three earlier years but not for the later three and, although it had also issued her forms to obtain a pension forecast, she had failed to follow these up.

Decision

The First-tier Tribunal held that, on the balance of probabilities, Louise Willmott had not received the deficiency notices. She had paid the voluntary contributions for 1994/95 without asking to make payments for the earlier years, suggesting that she was unaware of the deficiency. She had contacted HMRC and so had acted with due care and diligence.

Under the Social Security (Contributions) Regulations SI 2001/1004, regs 13 to 17, earnings from more than one employment could be aggregated. The First Tier Tribunal ruled that her earnings from 1999/2000 to 2001/02 should be amalgamated for the purpose of calculating class 1 National Insurance and her entitlement to contribution credit for those years. For the earlier years, she should be allowed to pay class 3 contributions.

Her appeal was allowed.

Louise Willmott v HMRC (TC06789)

Contributions made after fixed protection **(Lecture P1111 – 19.04 minutes)**

Summary –When cancelling the fixed protection certificate, HMRC had ignored the fact that the payments might have been void in law because they were made by mistake. The Tribunal judge made an order requiring HMRC to reinstate the certificate.

Gary Hymanson had a large main pension scheme funded by annual contributions as well as a number of small schemes into which modest sums were paid monthly.

He applied for fixed protection to cap his lifetime allowance at £1.8m and was advised at that time that he should stop all further pension contributions. He stopped his annual contributions but continued the smaller standing orders. These were later stopped following a review of his financial affairs when he was diagnosed with potential terminal cancer.

HMRC revoked the certificate of fixed protection because the additional pension contributions had been made.

Decision

The First Tier Tribunal concluded that Gary Hymanson would not have continued making the contributions had he understood the tax consequences. The effect of making even the first additional contribution of some £62 would have caused a loss of tax estimated at £50,000. This was a genuine mistake.

The judge said that were the case to proceed to the High Court, it would make an order rescinding the contributions erroneously made. In other words, they would be treated as having never been made.

The taxpayer's appeal was allowed.

Gary Hymanson v HMRC (TC06815)

Sale of properties by pension plan **(Lecture P1111 – 19.04 minutes)**

Summary - The sale of properties with proceeds kept outside of the pension fund was an unauthorised payment.

Allan McCashin was a member and joint trustee of a SIPP, administered by a company called IPS and partly funded by bank borrowing. All of the funds were invested in two commercial properties that were leased to Allan McCashin's business.

He wanted to emigrate to Gibraltar but to do so, he needed to invest net worth of £2 million. To generate these funds, his business sold the two properties owned by the SIPP and remitted the proceeds to his bank. The balance in excess of the mortgage on the properties was used to repay loans provided for investments in Gibraltar.

IPS asked Mr McCashin for the proceeds to be remitted to the SIPP to be used to provide a pension. IPS believed that this unauthorised payment from the fund would result in a tax charge. In July 2009, they reported the property sale to HMRC who opened an enquiry.

Allan McCashin claimed that he had moved the funds to a scheme in Gibraltar.

HMRC raised a discovery assessment on the basis that the transfer had been an unauthorised payment and the taxpayer appealed.

Decision

The First Tier Tribunal decided that the discovery assessment had not become stale, concluding that HMRC had acted promptly when alerted to the situation. Allan McCashin had not been cooperative and had caused delays to obtaining information.

The Tribunal judge said:

> 'Right up until, and in the hearing, the appellant believed that, because he was non-resident, paid tax in Gibraltar and all funds were intended for his retirement, he had no exposure to UK tax. He was wrong.'

The taxpayer's appeal was dismissed and the assessment was confirmed at £452,675 which comprised an unauthorised payment charge of £329,218 and an unauthorised payment surcharge of £123,417.

Allan McCashin v HMRC (TC06776)

Unauthorised payments out of pension scheme

Summary - The Upper Tribunal found that the taxpayer had made unauthorised payments out of a pension scheme.

Mr Clark retired from full-time work in 2000. His pension was originally in a fund established by his employer Southnews, which was subsequently acquired by the Trinity Mirror Group, which took over the fund. In 2004 or 2005 it appeared that Trinity Mirror was proposing to make changes to the pension scheme that would eliminate the requirement for it to make further contributions. Consequently, Mr Clark established two self-invested pension schemes ("SIPPs").

Mr Clark grew concerned at the lack of returns being produced by the SIPPs and wished to become more involved in the management of the funds and also to be able to borrow from the funds in order to invest in his own capacity. As the returns produced by the SIPPs were low, Mr Clark decided to transfer the funds held in one of them under an elaborate 'pension transfer plan'. The issue was whether he had made unauthorised payments.

Decision

Agreeing with HMRC, the Upper Tribunal found that the purpose of the relevant provisions was to preserve pension funds by discouraging unauthorised transfers from them. The transfer had therefore been a payment.

Gareth Clark v HMRC [2018] UKUT 397
Adapted from case summary in Tax journal 7 December 2018

Capital Taxes

CGT Planning For Non-UK Residents **(Lecture P1114 – 11.12 minutes)**

The Client Scenario

A friend of mine recently shared with me his plans to return to live in the UK after a decade or so living and working in the Middle East. His contract has, somewhat unexpectedly, not been extended so he finds himself in a position where he will be coming back to the UK in 4 to 6 weeks.

On moving abroad, he had sold his family home and used the proceeds to invest in two properties; a buy-to-let property (Property A) to generate a UK income stream to utilise his and his wife's UK personal allowances and a small house (Property B) to use as a base on his return visits to the UK. Both properties are in joint names with his wife. There is a small joint mortgage on Property B.

His family never properly lived in Property B but he figured that;

a) This would give him space to store family belongings that they wished to keep but did not want to ship overseas;

b) It would be cheaper and more relaxing than staying in hotels when they visited family in the UK; and

c) Any capital growth on the property would escape capital gains tax because he was living abroad and even if this property was sold after he resumed residence in the UK he would be able to claim private residence relief.

I liked the sound of a) and b). His assumption at c) on the other hand raises eyebrows.

He intended to sell Property B and use the proceeds from this property – and his termination payment from his overseas employment – to buy a larger family home in the UK. He wanted my confirmation that the substantial capital growth on Property B would not be charged to CGT (and if it was, could he do anything about this?). He may well decide to sell Property A as well but the gains are insignificant on this property.

Residence issues

Before we can do any sort of planning, the residence position needs to be determined.

The temporary occupation of Property B on his occasional return visits to the UK is not currently enough to trigger residence in the UK. He might be automatically non-resident under the "full-time work abroad" (depending on an analysis of his average working hours). If not, the UK "home" test would not apply as his main home is overseas (the fact that this is owned by his employer is immaterial).

Property B would constitute available accommodation for the purposes of the "sufficient ties test" but as he had no other UK ties, this alone can never trigger residence under this test no matter how many days he spends in the UK.

The client's return to the UK will undoubtedly trigger UK residence at some point, but the crucial question is "from when?"

He will be UK resident in 2018/19 as he will spend more than 183 days in the UK. The split-year rules are then considered. We will need to access at least one of these as otherwise he is treated as UK resident from 6 April 2018, thereby bringing his foreign income in 2018/19 within the scope of UK income tax. As he is currently working in a low-tax environment thereby offering no double-tax relief, this is something we must avoid.

Case 6 splits the tax year for employees coming back to the UK after ceasing full-time work abroad. However, Case 6 is ruled out because he has not been resident in at least one of the previous 4 tax years. This is extremely helpful as otherwise UK residence would be triggered under Case 6 not from the date of his return to the UK but from the day after the overseas contract ended. By ruling-out Case 6 we can extend the overseas part of the tax year and give more time for some CGT planning.

Case 5 splits the year when a taxpayer starts full-time work in the UK. At the moment his work plans are open-ended so this is discounted.

The year of return will therefore have to be split either under Case 4 (Starting to have an only home in the UK) or Case 8 (Starting to have a home in the UK). It doesn't matter which one of these applies as both trigger residence from the day the client starts to have a UK home.

Moving back into Property B is likely to be the UK-residence trigger date unless we can argue that the taxpayer is occupying Property B as "temporary accommodation" and that Property B is not a "home" within the context of the SRT. After all, not all houses are "homes".

It is not out-of-the-question for the client to come back and live in Property B without having a "home". A "home" is defined in the SRT as a place which is used as a home with a degree of permanence or stability as opposed to somewhere a person stays for occasional short periods and which provides a change from ordinary day-to-day life.

So, it would be possible to move into Property B on a temporary basis without laying down any roots and while still actively marketing the property for sale. We would then argue that he is not living there with any "permanence or stability". He is simply guarding it and preparing the property for onward sale. For example, when engaging the services of an estate agent to sell the property, sending them an email explaining he is "living temporarily in Property B until sale but is actively looking for a home elsewhere" wouldn't hurt. Neither would taking photos of it looking empty and unloved with a sleeping bag on the floor….

This is however a question of fact and degree and HMRC might take a different view.

A new permanent home would then have to be acquired by next 5 April. This in turn brings in an extra worry as within both Case 4 and Case 8 there is the requirement that for the part of the tax year before the taxpayer meets the UK home test, he should not have sufficient ties to the UK. This gets more difficult to satisfy as UK days accumulate.

It is therefore prudent for us to proceed on the basis that moving into Property B will trigger UK residence and that will be in 4-6 weeks. Which isn't long.

CGT on sale of Property B

The chargeable gain depends on whether the property is sold in a UK-resident period or a non-UK resident period.

a) Sale while UK resident:

If the sale takes place while he is UK-resident, the gain is proceeds less historical base cost. This is quite substantial.

Given that we will be splitting the tax-year under Case 4 or Case 8 on the basis that Property B is his “home”, it should follow that the gain is eligible for PPR relief. This will exempt the gain arising in the final 18 months of ownership (it will be difficult to argue that PPR applies in any previous period as his occupation was occasional and sporadic). No “deemed occupation” periods are relievable as these must have been preceded and followed by actual occupation.

The gateway to PPR relief is not whether the property is a “home” under the SRT but whether the quality of the occupation is sufficient to conclude that the taxpayer had an intention to occupy the property as a permanent home. So, while this and the SRT definition do not sit exactly square, in most instances one will follow the other. HMRC would surely struggle to win an argument that a property is a “home” under the SRT but is not one for PPR.

Can we increase the PPR element? This is possible by a carefully timed inter-spouse transfer.

If the husband (H) transfers his 50% interest in the property to his wife (W) she will inherit his CGT base cost. If W subsequently lives in Property B as her home, she will get PPR relief on the sale. In our case, W’s PPR relief would be the final 18 months of ownership.

However, if H’s 50% interest is transferred to W before they move back and occupy the property - i.e. the inter-spouse transfer takes place at a time when Property B is not their only or main residence - W does not inherit H’s PPR relief history. This is helpful because H’s PPR history is such that he doesn’t qualify for any PPR. The inter-spouse gift can therefore erase this history. Instead W’s PPR relief on the part acquired from H is based entirely on her occupation of Property B since the date of the inter-spouse transfer. This means if the inter-spouse gift takes place immediately before they reoccupy Property B, half the gain is eligible for full PPR relief. The other half is chargeable (apart from the final 18 months).

All this helps particularly as W’s UK income is covered by personal allowances so a decent chunk of the taxable gain would be at 18%.

Do however note that it is important to get the paperwork right if this option is to successfully play-out, so a properly documented transfer of registered title would need to take place. There is also the practical difficulty of dealing with the mortgage as H’s half of the loan would either need to be repaid or (if that is not possible) the bank would need to be persuaded to transfer the mortgage wholly across to W which:

- Might be difficult to arrange given that W’s has no taxable income and no obvious means of repaying the loan; and

- The transfer of debt (even between spouses) is consideration for Stamp Duty Land Tax and will trigger a SDLT charge.

b) Sale while non-UK resident:

If the sale takes place before UK residence is triggered, the disposal falls into the NRCGT rules. In this case the gain is calculated by replacing the historic base cost with the 5 April 2015 value of the property. This duly removes the capital appreciation between purchase and April 2015 from the CGT charge. [Time apportionment is another option but this is less advantageous here.]

Advice from estate agents seem to be that houses prices were quite perky in April 2015 and have plateaued a little since, so the post-April 2015 gain is attractively low. The CGT thereon is certainly far more palatable that the CGT due under the first option (even with a successful inter-spouse transfer).

However, selling in the non-resident period brings its own practical problems in that:

- It gives the family nowhere to live on their return (which is inconvenient but easily surmountable); but more importantly;
- Given how slow the wheels turn in the UK housing market, it can't be guaranteed that they would find a suitable buyer and exchange contracts before their return to the UK. Remember here that it is the exchange of unconditional contracts that will trigger the CGT disposal (not the completion of the transaction) but nevertheless 4-6 weeks is very tight.

The Trust Solution

The solution to this problem comes in the form of a trust. The process is as follows:

1. Husband and wife as joint settlors set up a discretionary trust. The trust is established with a token amount. A solicitor will be able to do this quickly and cheaply using a standard template. The beneficiaries are the settlors and their children (and their wider family in case of disaster).

2. The natural Trustees are the settlors (client and spouse). This (technically) makes this a non-resident trust as all Trustees would be non-UK resident. While this is not a serious problem from a tax perspective (the trust will be UK resident in a matter of weeks), it does mean that when the trust is registered with HMRC and questions are ever asked as to whether the trust is, or has ever been, non-UK resident, the Trustees will be obliged to answer "yes" and that answer waves a flag (as nobody trusts offshore trusts). The appointment of a UK family member (or agent or solicitor) as temporary co-Trustee to make the trust UK resident on creation avoids this issue. The co-Trustee can later step-down. [Note that the non-resident Trustees need to be UK-dom which in our case they are.]

3. The settlors then each transfer their 50% interest in Property B to the trust. This involves a simple transfer of registered title by the solicitor. If the unconditional contract for the transfer takes place before residence is triggered, we have a NRCGT disposal.

The tax implications of this arrangement are as follows:

- CGT will be payable under the NRCGT rules. Two NRCGT returns – one for each owner – must be filed within 30 days of completion. Given that the return will contain 2 estimated values – one at transfer, the other at April 2015 – there is an increased chance that HMRC might query one or other of the values, so advice from a couple of local estate agents before filing the return is recommended. Once professional valuations have been obtained, it is fair to then discount a 50% interest to reflect the open market value of a part share. This is the case even where the joint owners are spouses as there is no 'related property' principle for CGT (as there is for IHT). Note that this will only be of marginal assistance as the April 2015 value of a 50% interest must also be discounted by the same amount. There is some case law support for a 10% discount in these circumstances and I would suggest that this is very reasonable and should not be disputed by HMRC.

- If they are not required to file an annual SA return – and many non-residents will not if they don't have UK rental income – the tax is paid along with the filing of the NRCGT return. Not only does this accelerate payment, but it also requires some crystal-ball gazing as he may not know his UK taxable income for the year and will not therefore be sure of how much of the gain will fall into the basic rate band and be taxed at 18%. If they are in the SA system, the tax will be paid on the normal CGT due date (by which time no guessing will be required). Note that despite the transfer being to a trust, there is no possibility of deferring the tax charge as CGT holdover relief is not available on a transfer to a settlor-interested trust.

- The trust acquires the property at its market value at the date of the transfer, thereby giving a healthy base-cost uplift for the price of a small (ish) CGT charge. The added benefit of the trust arrangement is that the discretionary Trustees can exercise their powers to permit the beneficiaries to occupy the property. [Most trusts have this clause within the standard list of Trustee powers but it is worth reviewing the trust deed just to make sure this point is covered.] The advantage of this (aside from giving the settlor somewhere to live) is that any subsequent gain made by the Trustees would be eligible for PPR relief. There is little point in the trust charging rent for the use of the property as this would create an unnecessary income tax charge in the trust. However, a tenancy agreement which makes the tenants liable for all outgoings in relation to the letting is recommended as this prevents the need for the settlor(s) to added cash to the trust to help it meet its repair and maintenance bills.

- The transfer is immediately chargeable to inheritance tax. In the case of the transfer of a jointly owned property, two nil bands are available meaning a zero IHT charge on values transferred up to £650,000 (effectively £662,000 as donors tend not to use their annual IHT exemptions). For extremely high-value properties, the 20% IHT entry-charge may make the planning prohibitive. [In this case this was a reason for not transferring Property A in at the same time as this would generate an IHT charge for a minimal CGT saving.]

- The transfer is also caught by the 'gifts with reservation' rules as the donor is a beneficiary of the trust. The house is still therefore within the settlors' death estates for IHT. However, there is nothing 'lost' here as the property was in their estates anyway and the primary objective is to mitigate CGT.

- There is no SDLT liability for the trust as there is no consideration. However, as mentioned already, the outstanding mortgage means that the bank has a charge on the property which would block its transfer to the trust until the charge is lifted. If the bank agrees to transfer liability for the mortgage to the trust (unlikely anyway), this would be consideration for SDLT. Bear in mind here that the trust would be liable for SDLT at the higher rates so a 3% SDLT surcharge would apply (and this would make a big hole in any CGT saving otherwise obtained). The simple solution is to repay the mortgage before the transfer to the trust. In this instance the couple were in a position to do this by cashing is some investments (free of CGT as these are disposals in a non-resident period). This avoids any SDLT liability on transfer.

  Banks are however minded to drag their feet a little here and apart from the obligatory early redemption penalties on repaying the mortgage, we were duly informed that it would take 6 weeks for the charge to be released (despite this being done electronically on the push of a button once the money required to repay the mortgage is cleared). While a little irritating, this is not a problem for CGT purposes as the disposal takes place when the contract to transfer the property to the trust is signed (not the date when the land transfer is registered). The solicitor will simply wait for the bank's charge to be cleared before registering the transfer.

Then what…?

The plan is for the Trustees to sell Property B and distribute the proceeds to the settlors to help them fund the purchase of a new UK family home.

The Trustees gain on sale will be covered by PPR relief. A trust tax return will however need to be filed.

The cash appointment to the settlors will – in theory – give rise to an IHT exit charge. However, where the original transfer fell within the settlors' nil rate bands, the rate of tax on the subsequent capital appointment will be nil.

Even in cases where there is an IHT entry charge, exit charge rates are very low, especially where there are relatively few completed quarters which have elapsed between creation and the capital appointment. So, while IHT issues must be explained and dealt with, unless the property being transferred to the trust is of high value, IHT charges should not be prohibitive.

At this point the trust will have served its purpose and can be wound up.

In summary

Clients may be in a position where – either for business or personal reasons – they will be coming back to the UK and resuming residence at short notice. The window of opportunity to take advantage of their non-resident status to access the NRCGT regime will then close. Using a trust to hold and then sell UK property is simple to organise and can achieve CGT savings.

Creating a discretionary trust (Lecture P1115 – 17.50 minutes)

When creating a discretionary trust, it does not matter whether the trust has been created before the Finance Act 2006 changes or after 22 March 2006 when it came in to effect.

IHT on discretionary trust created during lifetime

When a discretionary trust is created, the settlor passes their trust assets into a trust. For IHT this is treated as a chargeable lifetime transfer, and so can potentially trigger an IHT charge. This charge can be mitigated by ensuring that the settlor passes assets that qualify for business property or agricultural property relief into the trust or by making use of any remaining nil rate band that the settlor has not already used in chargeable transfers that they have made in the previous seven years.

Any assets that are settled into trusts that exceed the reliefs and exemptions that are available will result in IHT becoming payable. This will be due at a rate of 20% where the trust pays the tax out of the trust assets or at an effective 25% rate where the tax is paid by the settlor.

One of the benefits of creating a discretionary trust that is free from IHT on creation is that the value of the trust fund could avoid IHT on death at a rate of 40%. Provided that the settlor survives 7 years from creating the trust, no further IHT will fall due. It's important to remember that discretionary trusts are potentially liable to an IHT charge when assets leave the trust as well as every ten years from the trusts creation.

CGT on discretionary trust created during lifetime

Assets that are transferred into a trust is a disposal for CGT purposes. However, because the settlor is creating a discretionary trust, there is the option to defer the gain arising. Under s260 TCGA 1992, gains on transfers relating to IHT chargeable lifetime transfers can be deferred by effectively passing the gain into the hands of the trustees so that the gain will only crystalise when the assets leaves that trust, either as sale by the trustees or as a transfer to one of the beneficiaries. Thus s260 TCGA 1992 effectively provides a cashflow benefit rather than exempting a gain from CGT.

In deciding whether to defer any gain under s260 TCGA 1992, it is important to consider the rates of CGT likely to be suffered when the trust is set up without any deferral claim and compare that to what is likely to be suffered in the future when the trustees pass on the assets. So for example if entrepreneurs' relief is available when the assets are passed into the trust, a tax rate of 10% upfront may well be considered preferable to deferring the gain and suffering significantly higher rates in the future of 20% or even 28% tax.

Claiming principal private residence relief (PPRR)

Where the asset being transferred into a discretionary trust is the settlor's main residence, they will be eligible for PPRR. It is important to consider banking that relief at the point that the property goes into trust rather than deferring any gain under s260 TCGA 1992. Claiming to defer the gain, will invalidate any PPRR available up to that point.

In addition, once a s260 claim had been made, PPRR will no longer be available when the property leaves the trust, even if during the time the asset was in the trust it was occupied by one of the beneficiaries as their main residence.

So where the property was occupied by the settlor as their main residence prior to creating the trust and is then occupied by one of the beneficiaries as their main residence while it is held within the trust, s260 relief should be avoided as PPRR would be available to cover both the gain that crystalises when the trust is set up and also the gain that arises when the asset leaves the trust.

Additionally, where a property has been held in trust and the asset is passed to a beneficiary absolutely, if a s260 relief deferral relief claim is made, any future PPRR is also invalidated for the beneficiary.

Discretionary trust created on death

Where the testator has left a will transferring assets into a discretionary trust on their death:

- The assets will form part of their death estate and so, unless covered by any reliefs, exemptions or remaining nil rate band, will be taxable at 40%;

- There will no CGT to consider as the transfer is occurring on death with the trust effectively acquiring the assets for CGT purposes at the uplifted probate value.

Perpetuities and Accumulations Act 2009

This Act is effective from 6 April 2010 and extends the number of years that we can hold our assets in trust for. Prior to this Act the maximum period was 80 years.

Frequently this time limit would be mentioned within the Trust Deed. If we had a Deed that did not contain this clause, the previous Perpetuities and Accumulations legislation stipulated that maximum at 80 years.

From 6 April 2010, any existing trusts can opt to extend from 80 years to 100 years while any new trusts can run for up to 125 years.

Remember, it will be the trust Deed that will stipulate the relevant time period but with no mention, then the Perpetuities and Accumulations Act 2009 is the default.

Article created from seminar by Amanda Fisher

Gifts to political parties (Lecture P1111 – 19.04 minutes)

Summary – Although s24 IHTA 1984 was incompatible with the European Convention of Human Rights, the Tribunal was not prepared to redraft the provision.

During 2014 and 2015, Arron Banks, as well as the companies that he controlled, had made several large donations to UKIP. Under s94 IHTA 1984, the transfers of value made by the companies controlled by Mr Banks were treated as made by him. The issue was whether the donations were exempt from IHT (s 24 IHTA) as gifts to qualifying political parties?

Under s 24, a qualifying political party is one that obtained at least:

- Two seats at the last election; or

- One seat at the last election and 150,000 votes.

In the 2010 general election, UKIP obtained no seats and so HMRC argued that the exemption did not apply.

However, at the time of some of the donations, there were UKIP MPs, but they had been elected at by-elections held after the relevant general election. At the general election, UKIP had secured a greater proportion of the vote than other parties that did succeed in having candidates elected.

The taxpayer appealed. He accepted that 'on its strict terms', s24 IHTA 1984 did not apply to him but argued that its application was a breach of his human rights (ECHR art 14 and A1P1) and a breach of EU law. S24 IHTA 1984 amounted to discrimination on the grounds of his political opinion, as his donations were a clear manifestation of his opinion.

Decision

The First Tier Tribunal agreed with Mr Banks stating:

> 'the concentration in s 24(2) on MPs elected at the previous general election under a first past the post system does not strike a fair balance in the context of the provision of tax relief for the funding of political parties — whatever the advantages and disadvantages of that electoral system for the purposes of representative democracy'

However, the Tribunal dismissed the appeal as making legislation compliant with EU legislation was a matter for Parliament and not them. They were not prepared to redraft the rules.

Arron Banks v HMRC (TC06768)

IHT automation **(Lecture P1111 – 19.04 minutes)**

The OTS has published its recommendations on administrative issues in relation to IHT saying that too many people have to fill in inheritance tax forms, and the process is complex and old fashioned.

The report highlights the benefits of:

- Designing a short form for the simplest estates;
- Reviewing the requirement for trustees to submit forms when no IHT is due and no reliefs or exemptions are claimed;
- Changing the existing form for lifetime charges and trusts, to include splitting up the form, improving guidance and aligning signature requirements for trustees with other parts of the tax system;
- Simplifying the administration and guidance; and ultimately
- Introducing a fully-integrated digital system for IHT.

https://www.gov.uk/government/publications/office-of-tax-simplification-inheritance-tax-review

Administration

Discovery had gone stale (Lecture P1111 – 19.04 minutes)

Summary – With a discovery made in 2005 but a delay of nearly two and a half years before the assessment was issued, the discovery had lost its quality of newness so the assessment was not valid.

Mr Beagles had filed his 2001/02 return on time. He had entered into certain tax avoidance arrangements, marketed by KPMG, that were designed to create a tax loss without a corresponding taxable amount. The arrangements were essentially the same as those considered by the Court of Appeal in the Astall case that were found to be unsuccessful.

The last date by which HMRC could give notice of intention to enquire into the 2001/02 return was 31 January 2004. In June 2004, realising that they had missed the deadline, HMRC decided to defer taking any action until progress had been made against the other participants in the KPMG scheme, in relation to which enquiries had been opened. Mr Beagle was the only scheme participant for whom HMRC did not raise an enquiry within the statutory time limit for 2001/02.

In August 2005, HMRC wrote to KPMG notifying them that it had received advice from counsel that the scheme did not work and that they intended to challenge the scheme through the courts. The letter identified the cases of Mr Astall and Mr Edwards, who eventually became the appellants in Astall, as potential test cases. The letter also referred to the possibility that a discovery assessment may be issued to Mr Beagles, if the scheme was found not to be successful.

The decision of the Special Commissioner in Astall was released on 14 August 2007. Subsequently, on 15 January 2008, HMRC issued Mr Beagles with a discovery assessment totalling £437,389.60.

Subject to certain exceptions, which the Upper Tribunal said were not relevant in this case, s34 TMA 1970 provides the time limit within which an assessment under s29 TMA 1970 could be made. It states that it may be made at any time not later than five years after the 31st January next following the year of assessment to which it relates. Although within time, Mr Beagle appealed against the assessment arguing that the discovery had become 'stale'.

Decision

The Upper Tribunal noted that by August 2005, HMRC believed that KPMG's scheme did not work and was aware of the insufficiency in Mr Beagles' return.

There followed a 'lengthy' delay of nearly two and a half years before the assessment was issued. There was no 'ongoing litigation at the time of the discovery' and the evidence showed that HMRC had 'actively considered the issue of an assessment' before closure notices were issued in January 2007 to the taxpayers involved in Astall but decided against it.

The Upper Tribunal said that the First Tier Tribunal had made an error of law when they found that the discovery had taken place following the decision in Astall. The insufficiency of tax could not 'newly appear' twice.

The judge concluded the delay was material; the discovery lost its quality of newness by the time the assessment was issued and it was therefore invalid.

The appeal was allowed.

Clive Beagles v HMRC ([2018] UKUT 0380 (TCC))

Failure to submit RTI returns on time

HMRC imposed penalties on the taxpayer arguing it had failed to submit its 2017/18 RTI returns by the due date.

Vasco properties had used HMRC's basic PAYE tools software and claimed this showed it had submitted the correct information by the correct dates and for the correct months. The taxpayer appealed.

Decision

The First Tier Tribunal said there was nothing in the taxpayer's print-outs to show there were outstanding returns or unsuccessful submissions.

The taxpayer's appeal was allowed and the penalties cancelled.

The judge added that:

> 'Given that there is no notice to file an RTI return, how can HMRC impose a penalty for failure to make a timely return until it has been made?'

It seemed to the judge that there was a 'case for saying that such a non-filing failure cannot be penalised under FA 2009, Sch 55 until they become late filing failures, i.e. until the return is actually filed, and that all such penalties imposed in these circumstances are invalid'. But he concluded he did not need to decide that in this case.

Vasco Properties v HMRC (TC06801)
Adapted from Taxation (29 November 2018)

Application for late appeal

Summary – The taxpayer's application to make a late appeal was accepted with the Tribunal highlighting that the burden of proof of showing that the estimates were excessive lay with the taxpayer.

Mark Booth has been operating a car repair business since 2005 but had made no tax returns in respect of this business. He stated that he had never taken more than £150 to £180 per week out of the business and he therefore believed that he was below the threshold for paying income tax and did not need register for self-assessment or submit returns.

In 2014, he was subject to a compliance visit from HMRC. With very limited business records, HMRC estimated the profits from his business and issued assessments based on those estimates.

Assuming that HMRC knew what it was doing, he paid the tax due until he could no longer afford to. HMRC threatened bankruptcy proceedings and bailiffs were instructed to enter his business premises and take the tools of his trade if the outcome of the hearing went against him. The taxpayer approached accountants to help him and they referred the matter to an investigation specialist. The new agent submitted applications for late appeals to be allowed. HMRC did not agree to this and the matter was referred to the First-tier Tribunal.

Decision

The tribunal considered:

1. The significant delay in making the appeal;

2. The fact that the taxpayer had virtually no knowledge of the tax system and simply accepted that, if HMRC said that he owed money, he must pay it;

3. The fact that there was a strong indication from figures contained with his recently filed returns that the estimates for the earlier years could be significantly overstated.

The Tribunal concluded that the late appeals would be allowed but reminded Mr Booth that he had the burden of proof for showing that the estimates were excessive.

Mark Booth v HMRC (TC6840)

Specified employment intermediary returns

Summary – The company had not provided the services of more than one individual at any time within any of the quarters to which the penalties related and so it was not required to file the employment intermediary returns.

The business was incorporated on the basis it would provide recruitment agency services but its nature changed to supply individuals to work for its clients. This resulted in it falling potentially within the rules for employment intermediaries. In broad terms, those rules require that a “specified employment intermediary” must file a quarterly return within one month of the end of each quarter setting out specified information in relation to itself and each of the individuals whose services it is providing.

HMRC imposed penalties on Leverton Search Ltd, a recruitment agency, because it had failed to submit employment intermediary returns.

Leverton Search Ltd appealed. It was common ground that, if Leverton Search Ltd was a “specified employment intermediary” (as defined in Regulation 84E of the PAYE Regulations) in respect of a quarter then the company had failed to file an employment intermediary returns and it was liable to the penalties imposed unless there was a reasonable excuse for its failure.

Decision

At the First-tier Tribunal, the taxpayer initially accepted it had been a specified employment intermediary for the relevant quarters. However, it turned out that it did not satisfy the condition in reg 84E(b). This stipulates that, at some point within a quarter, there must be more than one individual who provides services to a client under a contract between the employment intermediary and one or more clients.

In this case, given that the company had been incorporated to carry on business as a recruitment agency and had become an employment intermediary only on a gradual basis, it had not provided the services of more than one individual at any time within any of the quarters to which the penalties related.

As a result, HMRC agreed that the company was not obliged to file the intermediary returns in question.

The taxpayer's appeal was allowed.

Leverton Search Ltd (TC6786)

Deadlines

1 January 2019

- Payment of corporation tax liabilities for accounting periods ended 31 March 2018 for small and medium-sized companies not liable to pay by instalments.

7 January 2019

- VAT returns and payment for 30 November 2018 quarter (electronic payment).

19 January 2019

- Pay PAYE, NIC, CIS and student loan liabilities for month ended 5 January 2019 if not paying electronically by this date.
- File monthly construction industry scheme return by this date.
- Payment of PAYE liability for quarter ended 5 January 2019 if average monthly liability is less than £1,500 is due by this date.

21 January 2019

- File online monthly EC sales list by this date.
- Due date of submission for supplementary Intrastat declarations for December 2018.

22 January 2019

- PAYE, NIC, CIS and student loan liabilities should have cleared with HMRC.

31 January 2019

- Electronic filing for 2017/18 personal, partnership and trust SA tax returns.
- Pay balance of 2018/19 SA and first instalment of 2018/19 SA liabilities.
- 2016/17 SA tax returns have to be amended by this date.
- CTSA returns for accounting periods ended 31 January 2018.
- Companies House filing: 30 April 2017 private and 31 July 2018 public companies.

1 February 2019

- Penalty charged for late 2017/18 ITSA returns.

14 February 2019

- Deadline to apply to defer Class 1 NIC for 2018/19.

News

No-deal Brexit: Customs, VAT and excise (Lecture B1111 – 26.09 minutes)

From a date to be appointed, the Value Added Tax (Disclosure of Information Relating to VAT Registration) (EU Exit) Regulations, SI 2018/1228, will allow HMRC to disclose certain information about VAT registration numbers in response to enquiries about a particular number, similar to the function currently performed by the EU 'VIES' system, but for UK numbers only. The permitted information includes confirmation that the number is a VAT registration number allocated to a person in the UK's VAT register and the name and address of that person.

HMRC's dedicated web page will host this collection of regulations and explanatory documents for customs, VAT and excise, intended to apply 'on a contingency basis' in the event of a no-deal scenario. These will be covered by a 'single overarching HMRC impact assessment', to be published on 4 December 2018.

HMRC says this legislation is designed to replicate broadly the current EU legislation and 'minimise disruption of a no deal scenario on the UK's international trade'. Taxpayers are also referred to HMRC's 'partnership pack' and step-by-step guides to customs processes, first published in October.

www.gov.uk/government/collections/customs-vat-and-excise-regulations-leaving-the-eu-with-no-deal

No-deal Brexit - Three steps to take now (Lecture B1111 – 26.09 minutes)

If the UK leaves the EU without a deal, from 11pm GMT on 29 March 2019, many UK businesses will need to apply the same processes to EU trade that apply when trading with the rest of the world.

The government's latest guidance on a no-deal Brexit outlines three steps businesses need to take now to remain compliant. Failure to do so by 29 March 2019, will mean that businesses will be unable to move goods in and out of the country.

This guidance is relevant to businesses that are established in Great Britain, the Channel Islands or the Isle of Man and import to or export from the EU.

1. Register for a UK Economic Operator Registration and Identification number. This number will be needed to be able to import or export goods with the EU; without it, business will not be able to apply for authorisations to make customs processes easier. (www.gov.uk/hmrc/get-eori).

2. Businesses must decide if they want to hire an agent to make import and/or export declarations for them or if they want to make these declarations themselves by buying software that interacts with HMRC systems. Businesses should act now by either

    - finding an agent to find out what information they'll need;
    - talking to a software provider to ensure that their product meets their needs.

3. Businesses should contact the organisation that moves their goods to establish if they will need to supply additional information for the safety and security declarations for their goods, or whether they will need to submit these declarations themselves.

https://www.gov.uk/guidance/get-a-uk-eori-number-to-trade-within-the-eu

Crown Dependencies customs arrangements (Lecture B1111 – 26.09 minutes)

The government has signed new arrangements with Jersey, Guernsey and the Isle of Man to ensure that when the UK leaves the EU traders moving goods between the UK and Crown Dependencies will continue to pay no customs duty and the UK and the Crown Dependencies will maintain a common external tariff.

In the case of the Isle of Man – where there is an existing agreement covering customs, VAT and excise matters – modifications have been made to the customs aspects of the agreement but existing arrangements for VAT and excise-related issues remain unchanged.

These new arrangements are compatible with any future agreement on customs reached with the EU.

www.gov.uk/government/news/uk-agrees-new-customs-arrangements-with-the-crown-dependencies

Government funding for declarations (Lecture B1111 – 26.09 minutes)

In preparation for leaving the EU, businesses can apply for grants to help fund training and IT improvements connected with completion of customs declarations.

Training grant

The grant will give up to 50% of the cost of training for employees, up to a limit of £750 for each employee on a course.

To apply for a training grant, a business must either:

- complete customs declarations for itself or someone else (or intend to in the future);
- import from, or export to the EU and complete customs declarations (or intend to complete customs declarations in the future).

IT improvement grant

This grant will be worth up to €200,000 to buy software, as well as necessary hardware and setup costs, for completing customs declarations.

To apply for an IT improvements grant, a business must:

- currently complete customs declarations for importers and exporters;
- have 250 employees or fewer; and
- have an annual turnover of £50m or less.

Adapted from Tax Journal (23 November 2018)

Electronic sales suppression (Lecture B1111 – 26.09 minutes)

What is an electronic point of sale system (EPOS)?

EPOS systems are designed to support businesses in keeping accurate, real- time records necessary for running a business and managing their accounts. This information can also be used by businesses to help them pay the right amount of tax, at the right time.

In recent years, it has become apparent that some software developers are developing EPOS systems that deliberately suppress sales in order to facilitate tax evasion. This manipulation broadly takes one of two forms:

1. businesses use illegitimate software and technology that has been created specifically for the purposes of facilitating tax evasion;
2. businesses deliberately misuse legitimate EPOS functions to suppress their sales (for example, a business could misuse a till training mode, which automatically allows for sales to be excluded from their accounts).

Call for Evidence

The government announced at Budget 2018 its intention to consult on this issue. Options being considered include requiring businesses to use specific software or hardware that limits the opportunity for these practices, or an encrypted log which contains details of all transactions and adjustments.

HMRC is now undertaking a call for evidence in order to learn more about the nature and scale of the problem as a first step to developing new options for addressing this tax evasion.

The government is interested in both the supply and use of electronic sales suppression software. The core objectives of the call for evidence are to explore the:

- attitudes towards the use and promotion of electronic sales suppression by EPOS providers;
- ways non-compliant businesses use EPOS systems to suppress sales in the UK;

- motivations behind the use of electronic sales suppression as a means of suppressing sales;
- availability of, and methods of access to, electronic sales suppression software specifically designed for the purposes of evading tax;
- role the EPOS software industry can play in supporting HMRC to tackle this evasion.

The call for evidence will run until 20 March 2019

www.gov.uk/government/consultations/electronic-sales-suppression-a-call-for-evidence

HMRC's 'good work plan'

The government has published its 'Good work plan', setting out the actions it intends to take in response to the four consultations which followed its conclusions in February on the Taylor review of modern working practices.

The 'Good work plan' contains various commitments on employment status and tax, including:

- bringing forward detailed proposals on how the employment status frameworks for the purposes of employment rights and tax could be aligned;
- legislating to improve the clarity of the employment status tests, which will include the Taylor recommendation that tests for self-employment or worker rights should place more emphasis on control and less on substitution;
- legislating to expand the remit of the Employment Agency Standards Inspectorate to cover umbrella companies and take enforcement action where required, working closely with HMRC;
- encouraging the broadening of making tax digital;
- continuing work on ways to encourage cashless payments, promote compliance among users of online marketplaces and make greater use of 'conditionality' in licensed sectors; and
- HMRC to continue targeting unpaid internships while raising awareness among at-risk groups.

The report reiterates the government's response after Taylor that it has no plans to revisit the disparity in rates of NICs between employees and the self-employed, even though it agrees this is no longer justified by small differences in contributory benefits.

www.gov.uk/government/publications/good-work-plan

Business Taxation

Make your mind up – dividend or salary (Lecture B1111 – 26.09 minutes)

As we know, it is not uncommon for director-shareholders of owner-managed businesses to pay a low salary with the balance of remuneration in the form of dividends. Provided the company has sufficient distributable reserves, paying dividends is likely to be the cheaper option. Indeed, this is what happened in the Powerstation UK Ltd case that was originally heard in 2017, or was it?

Powerstation UK Ltd began to struggle financially during the 2008 recession, leading to a Creditors' Voluntary Liquidation in 2015. Global Corporate Limited purchased various rights to action from the Liquidator. The Deed of Assignment included the right to bring a claim for "alleged illegal dividends and/or transactions at an undervalue" arising out of payments to Mr Hale.

Mr Hale was a shareholder and director of Powerstation UK Ltd. Based on advice received from the company's accountant, Mr Hale was paid a combination of salary and dividends. In addition to his nominal salary, he drew £1,383 per month as dividends, signing dividend tax forms each month. At each year end, the company's accountant checked to see if there were sufficient distributable profits to support the dividends paid and, when there were not, the shortfall would be declared as PAYE earnings and additional payments made to HMRC. In its last trading year, there were no distributable reserves.

In 2017, the High Court considered two issues relating to this case:

1. Whether the dividends were unlawful as they had been paid in breach of s830 CA 2006, which says that distributions should be made out of profits available for the purpose, and that Mr Hale knew this and was therefore liable to return the payments under s847; and

2. If the payments were not in fact dividends, whether the director had a right to be paid for the work he did for the company.

Unlawful dividends?

Despite the director signing the form, the Court held that the company did not declare and pay a dividend each month. The Court held that the Company's Articles did not allow it to declare dividends without distributable profits. Mr Hale's dividends were effectively provisional dividends, to be reviewed at the end of the year. This meant that the monthly payments in the final period of trading were never declared as dividends, and so the director could not be liable to repay them under s847 CA 2006.

Entitlement to be paid

Mr Hale was entitled to be paid for the work provided to Powerstation UK Ltd. After all, if he had not done the work someone else would have done so and be paid. The company would have been unjustly enriched if Mr Hale had not been paid the £1,383 a month in addition to his nominal salary and that this level of remuneration was not excessive in the circumstances. The remuneration was proportionate and fair and Mr Hale was entitled to payment on a quantum meruit basis.

At the time, many observers questioned whether this was the correct decision. It would seem that, by making ‘provisional’ dividend payments, the company was on to a win-win situation. If the company generated sufficient profit to allow dividends to be paid, the director pays less tax than had they been remunerated through PAYE. However, if profits are lacking, the director simply re-categorises the remuneration as salary.

Court of Appeal decision

At the end of 2018, the Court of Appeal overturned this decision and declared that the dividend payments contravened s830, making them illegal dividends that needed to be repaid to the liquidator.

The court’s decision makes it clear that dividends paid out must be based on the latest set of accounts prepared before declaring the dividend and, unless the company’s Articles permit it, a dividend declaration cannot subsequently be retracted to allow a claim for remuneration on a quantum meruit basis.

In the future

Going forward, we now have a precedent that reclassifying dividends to salary when a company is insolvent is unlawful and the original dividends paid out will need to be repaid.

If a company is unlikely to have sufficient reserves to support a dividend payment, it may be prudent to increase the salary to avoid being liable for illegal dividends needing to be repaid should the company become insolvent. While less tax efficient for the director, this approach will ensure that illegal dividends (or a director’s loan) will not need to be repaid if the company becomes insolvent. To avoid a claim for excessive remuneration, any salary paid to the director must be properly authorised by the shareholders and reflect the work performed by the directors.

Global Corporate Limited v Hale (2017) EWHC 2277 (Ch) / [2018] EWCA Civ 2618

Investment properties –accounting and tax (Lecture B1112 – 14.10 minutes)

Accounting requirements

FRS 102 requires that if the fair value of the property can be measured reliably without undue cost or delay, the property must be measured at fair value with changes in the fair value each period reported as income or expense in the profit and loss account.

FRS 101 permits the above treatment but also allows the business to report investment properties at cost and then depreciate them. This latter treatment is not considered further as it is rarely if ever used in the UK.

Deferred tax implications

The investment property gains or losses in value will not be taxed or allowable until the property is disposed of. The annual revaluation therefore creates a timing difference as there are no immediate tax consequences.

Deferred tax must be booked via tax expense in the profit and loss account.

It is generally calculated assuming the property will be sold at its fair value on the reporting date.

There is an exception to this where the property has a limited useful life and is held within a business model to consume substantially all of the economic benefits (direct and indirect cash flows) embodied in the property over time. The exception is rarely if ever used – it might arise, for example, if the business intends to rent out the property until it needs to be demolished within a finite time frame, or where the property is held under a head-lease and will be handed back to the lessor at the end of the lease term.

Remember that a 28% rate would apply for companies subject to the ATED-CGT regime (i.e. where the company is liable to pay the ATED each year on the property.

Example

XYZ Ltd owns a portfolio of commercial investment properties. Relevant values are:

	FV	Indexed cost
31 December 2016	£23.4m	£14.8m
31 December 2017	£27.2m	£17.7m
31 December 2018	£26.0m	£17.7m*

*Indexation allowance was frozen at the December 2017 RPI for companies.

It intends to hold its properties for a few years (at least until 2021) before selling them to re-invest in other properties.

Calculate the deferred tax amounts XYZ must recognise under FRS 102 and how these will be booked.

Assume a tax rate of 19% until 31 March 2020, 17% thereafter.

Solution

January 2017 17% x (23.4 – 14.8) = £1.462 million

Dr Retained earnings	£1.462m	
Cr Deferred tax liability		£1.462m

At 31 December 2017 revalue upwards by £3.8m, via P&L.
Update DT liability to 17% x (27.2 – 17.7) = £1.615 million

Dr 2017 P&L tax expense (1.615 – 1.462)	£0.153m	
Cr Deferred tax liability		£0.153m

At 31 December 2018 reduce value by £1.2m with a corresponding expense in P&L.
Update DT liability to 17% x (26.0 – 17.7) £1.411m

Dr Deferred tax liability (1.615 – 1.411) £0.204m

Cr 2018 P&L tax expense £0.204m

Because the cost of an investment property for tax purposes used to constantly increase as the RPI changed (up to December 2017), there was no correlation between the fair value change and the tax effect.

After December 2017, there is a correlation as the unrealised gain changes solely due to the change in the fair value of the property.

In the example above:

2017: FV change +£3.8m, tax expense £0.153m (effective rate 4.03%)

2018: FV change -£1.2m, tax credit in P&L £0.204m (effective rate 17%)

The fair value adjustment and the related deferred tax impact on profit and loss account are both unrealised and must be ignored when calculating the amount of profit available for distribution

Disposal of a property

When an investment property is disposed of, a chargeable gain or allowable loss will be computed and be subjected to corporation tax, and the liability reflected as current tax expense in the profit and loss account.

Once disposed of the deferred tax liability (or asset) for that asset is no longer needed and must be reversed, using the deferred tax expense in the profit and loss account.

Generally the deferred tax credit to profit and loss account would net against the current tax debit, unless the assumption used for the deferred tax rate was different to the actual tax rate charged when the properties were sold.

Example

Assume that the above portfolio was disposed of on 2 March 2020 and that the values had not changed since 31 December 2018 (i.e. the properties were sold for a combined value of £26 million. The company was not expecting to sell the properties until 2021 but received what it thought was a very good offer so decided to sell them.

The company's tax rate for its year ended 31 December 2020 will be:

91/366 x 19% + 275/366 x 17% = 17.4973%

The chargeable gains are (26 – 17.7) £8.3 million, so the corporation tax on the gains will be (17.4973% x £8.3m) £1.452m.

The accounting entries are:

Dr Current tax expense	£1.452m	
Cr Current tax liability		£1.452m
Dr Deferred tax liability	£1.411m	
Cr Deferred tax expense		£1.411m (amount computed at 31/12/18)

There would be no gain or loss in the profit or loss account, as the properties were sold for their previous carrying value of £26 million, but there will be a tax effect in the profit and loss account of (1.452 – 1.411) £0.041 million debit.

The previous debits and credits to profit and loss account are now realised, net of the current tax expense of £1.452m and can be distributed to shareholders if desired.

Contributed by Malcolm Greenbaum

The new substantial shareholding regime (Lecture B1113 – 25.12 minutes)

Sale of subsidiary company's shares v trade & assets

The seller group and the purchaser will usually have different objectives and considerations in determining whether the sale should be structured as:

- a sale of the subsidiary company's shares; or
- a sale of the subsidiary's trade and assets

The seller and purchaser often have conflicting requirements. Corporate sellers now have an even stronger desire to sell shares as a tax-exempt transaction under the Substantial Shareholding Exemption ('SSE'). On the other hand, purchasers are keen to buy assets to benefit from the tax write offs for goodwill and intellectual property. '

Distress' sales will often be structured as an asset sale since the purchaser will want to limit their financial risk.

In a group context, the net proceeds realised on an asset sale will usually be extracted by way of an intra-group dividend, loaned to other group members or used to repay borrowings. Thus, the normal 'double tax' problem associated with asset sales does not usually arise.

The final form of the transaction is usually governed by the relative bargaining strength of seller and purchaser, and thus the ability of each party to negotiate for their required position.

Under a share sale, the vendor transfers all the company's taxation and commercial risks to the purchaser, except to the extent they have been transferred back to the vendor by appropriate warranties and indemnities in the sale agreement.

Some of the main benefits of a selling the subsidiary's shares are:

- The share sale may be eligible for the SSE and thus tax-exempt (with possible degrouping charge benefits);
- Value may be realised for the company's unused tax losses (subject to anti-avoidance legislation);
- No 'cessation of trade' problems arise, for example, problems on transferring employees, assignments of leases and novation of trade contracts etc;
- Responsibility for liabilities relating to the vendor's ownership of the company are passed to the purchaser, subject to limitations imposed in the sale agreement by way of warranties and indemnities.

If the shares can be sold 'tax-free' under the SSE, a trade and asset sale offers few advantages by comparison.

However, the seller group may be forced down the 'trade and asset' sale route where the purchaser identifies significant commercial or legal risks at due diligence. Distress' sales will also often be structured as an asset sale.

The substantial shareholding exemption (SSE) (post-31 march 2017)

From 1 April 2017, the availability of the SSE depends on satisfying only two main conditions:

1. The relevant shareholding investment must qualify as a 'substantial shareholding' (being throughout the relevant 'twelve month period (para 8, Sch 7AC, TCGA 1992); AND
2. The company being sold (the investee company) must be a qualifying company or qualifying holding company throughout the above period (para 19, Sch 7AC, TCGA 1992).

Key changes to SSE conditions (from 1 April 2017)

- It is no longer necessary to consider the tax status of the investor company/group (i.e. the company/group holding the shares of the 'target' (investee) company. This is a very useful change. Many subsidiary companies' do not always have a full understanding of the make-up of the wider group and have sometimes been difficulties in analysing the treatment of certain types of overseas entities. Furthermore, UK companies selling their 'sole' subsidiary can obtain their SSE without having to deal with the difficulties of the para 3, subsidiary SSE exemption.
- Under the original rules, the company being sold had to satisfy the 'trading' condition immediately after the disposal. This requirement has now been abolished provided the company is sold to an unconnected purchaser.

  Given that the actions of the purchaser immediately after its acquisition are not within the seller's control, this is a very helpful relaxation. Thus, this requirement now only needs to be considered where the relevant company is sold to a connected buyer.

- SSE can now apply to the sale of less than 10% of the ordinary share capital (carrying a less than 10% 'economic' interest provided the selling company held at least a 10% interest for a 12-month period with the six years up to the disposal.

Example 1 – SSE on sale of a single trading subsidiary

Baez Ltd purchased 100% of the issued share capital of Diamonds and Rust ('DAR') as a result of a buy-out transaction in 2010. DAR is an established jewellery manufacturer and wholesaler. It has no investment related activity.

Joan and Bob each hold equal shareholdings in Baez Ltd. In June 2018, they were approached by Baby Blue Ltd, which offered to purchase the shares in Baez Ltd (to obtain DAR's business) for around £3.5 million. However, after taking advice, they decided to sell Baez Ltd's 100% holding in DAR instead.

Baez Ltd's capital gain on the sale of DAR was about £3.5 million, which was 'tax-free' under the SSE provisions.

The shareholders intend to use all the sale proceeds to purchase a portfolio of commercial properties within Baez Ltd. Baez Ltd would therefore become a family property investment company with the full sale proceeds being reinvested without any tax charges. (This would not have been possible under the pre-1 April 2007 SSE regime.)

Dealing with capital gains and intangibles degrouping issues

The degrouping charge rules in (what is now) s179, TCGA 1992 were originally designed to thwart the 'envelope trick'. However, due to their wide-ranging nature, they can still be triggered by commercial sale transactions.

Broadly, where a subsidiary company leaves a (capital gains) group within six years of having acquired a chargeable asset from a fellow group company (and still holds that asset), this will trigger a degrouping event under s179 (4), TCGA 1992. This requires a deemed disposal (and re-acquisition) of the relevant asset immediately after the original intra-group transfer, which generally produces a taxable gain (subject to indexation relief).

FA 2011 changes to degrouping tax treatment

FA 2011 radically changed the way in which degrouping tax charges were treated. The actual degrouping gain/loss is still calculated on the same basis as before, i.e. the transferee subsidiary is deemed to sell and reacquire the relevant asset at its market value immediately after the previous intra-group transfer.

However, where the transferee company leaves the group due to a disposal of its shares (or shares in another group company) – as will typically be the case – then the degrouping gain is added to the consideration received for the disposal of the shares. On the other hand, if the deemed degrouping disposal gives rise to a capital loss, this is added to the base cost of the shares being sold (s179 (3D), TCGA 1992).

One very important consequence of these changes is that where the sale of the subsidiary (or other group company) qualifies for the SSE, this will also ensure that the degrouping gain obtains the benefit of that exemption.

Where SSE is not available – for example, on the sale of an investment subsidiary – the FA 2011 degrouping charge treatment still applies. In such cases, the taxable gain on the sale of the subsidiary, including the degrouping gain, would fall on the seller (subject to any reallocation election under the revised s171A, TCGA 1992).

Intangibles degrouping rules

Under the intangibles regime, where a (75%) subsidiary company leaves a group:

- holding 'new' goodwill or intangible assets;
- which it previously acquired within the previous six years from a fellow group company under the 'tax-neutral' rule in CTA 2009, s 776,

CTA 2009, s 780 imposes a degrouping charge on the 'departing' subsidiary. The subsidiary is deemed to have realised and reacquired the asset immediately after the original intra- group transfer at its then market value. Consequently, this will normally give rise to a taxable credit, based on the excess of the market value over any available base cost.

Before the Budget 2018, an intangibles degrouping charge would arise in the 'departing' subsidiary company, triggering an actual tax charge (or, if the value had declined, a tax loss).

However, under the Finance (No. 3) Bill 2018, if the selling company is able to claim the SSE on the sale, the intangibles degrouping profit is also exempt from corporation tax Although this aligns the SSE treatment of the intangibles degrouping charge with the capital gains degrouping rules, the actual mechanics are different. Under the revised 'intangibles' provisions, the intangibles profit is exempted from corporation tax (where SSE is available to the selling company) (s782A, CTA 2009).

Contributed by Peter Rayney

EU Digital services tax (DST)

There is still no agreement within the EU countries on the proposed EU DST. France and Germany issued a joint proposal which calls for the 3% tax to be limited to revenues from advertising sales, dropping elements of the original proposal which also included intermediary activities and selling user data. They also emphasised that they are still focussed on the OECD agreement to be implemented by 2020, with the EU DST coming into force in 2021 if that was not the case.

In addition, the European Parliament's economic and monetary affairs committee presented its report to the European Parliament on 5 December, recommending a broadening of some aspects of the Commission's original proposal which followed its draft report of September which has been previously covered in our November 2018 notes.

Sweden, Finland, Ireland, Denmark continue to oppose any interim EU tax before agreement at OECD level.

Contributed by Joanne Houghton

Functional currency and exchange losses

Three companies within the Smith and Nephew group (the S&N companies) changed their functional currency from sterling to dollars and this resulted in exchange losses being recognised in their statements of recognised gains and losses (STRGL) of £445m, £138m and £90m. The S&N companies claimed a deduction for these exchange losses but HMRC did not accept that the losses arose for the purposes of corporation tax and disallowed the deduction.

S&N companies' appeal to the First Tier Tribunal was allowed. The FTT decided that the accounts were prepared in accordance with GAAP, that the exchange difference gave rise to exchange losses as defined in the legislation and that the amount of the exchange difference did fairly represent the losses as defined in the legislation.

This case follows the Court of Appeal in *GDF Suez Teesside Ltd v HMRC* [2017] UKUT 68 (TCC) ('*GDF Suez'*) which looked at the meaning of 'fairly represents' for the purposes of the loan relationship legislation.

The change in functional currency arose from transferring the S&N companies under S&N Plc and the exchange losses came about because intercompany receivables held by the companies were left in sterling. The result of the movement between sterling and the dollar was an exchange loss.

Exchange differences on loan relationships were at the time of the case brought into tax by FA 1996, s 84A (repealed by F (No.2) A 2015, s 32, Sch 7 paras 1 & 4). However, s 84A then specifically excluded any exchange gain or loss which is in relation to an asset or liability representing a loan relationship of the company or as a result of the translation from one currency to another of the profit or loss of part of the company's business and is recognised in the STRGL.

This provision therefore appears to mean that the losses would not be recognised but there were then further regulations to consider – the Exchange Gains and Losses (Bringing into Account Gains or Losses) Regulations 2002 (the 2002 Regulations') which reinstated the exchange differences excluded under s 84(3).

Were the accounts GAAP compliant?

In translating the accounts of the companies into the functional currency of dollars at the time under SSAP 20 there were two possible accounting treatments – the single rate (SR) method and the foreign operations (FO) method. The SR would not have given rise to any exchange differences but under the FO method the balance sheet is translated at each period end and therefore exchange differences do arise. The S&N companies used the FO method.

The FTT decision on which method should have been used was based on the evidence of expert witnesses and on accounting manuals from Deloitte, PwC and KPMG. HMRC's appeal to the UT was made on the basis that the FTT had erred in law in reaching its decision on these bases. The UT dismissed this appeal and stated that HMRC had not shown where the error had been made but just did not seem to like the outcome.

Was there an exchange loss?

HMRC argument here was that there was no real economic loss to the company just an arithmetic one as there had been no realised exchange differences only accounting differences on the translations.

S&N companies argued that there did not have to be an actual loss and the UT referred to FA 1996, s 103(1A) (now CTA 2009, s 475 (1)) which notes that exchange differences arise

> *'as a result of comparing at different times the expression in one currency of the whole or some part of the valuation put by the company in another currency on an asset or liability of the company'*

and stated that if this comparison produces a loss or gain then it is an exchange loss or an exchange gain, the wording is not ambiguous. HMRC's appeal on this second point was therefore dismissed.

Did the loss fairly represent the losses of the company?

Again, HMRC argued that the FTT's decision was wrong because the S&N companies did not suffer any real economic loss and had no underlying exchange rate exposure.

Decision

In reaching its conclusions the UT referred to the *GDF Suez* case where the accounting treatment was overridden by the 'fairly represents' concept which in the *GDF Suez* case allowed a £200m gain to be brought into tax which was not within the UK GAAP accounts.

The UT concluded that in the S&N situation the losses in the accounts did fairly represent the loss to the companies and therefore could be allowed as a deduction.

The UT distinguished this situation from the *GDF Suez* case because of the following:

- there was no tax avoidance scheme in the S&N arrangements as there was in *GDF Suez* – therefore the use of the accounts override allowed by fairly represents could not be justified

- there is no accounting mismatch as there was in *GDF Suez* – an exchange difference is a comparison of outcomes using exchange rates at two different times rather than a transaction between two entities which is treated differently in each

- the method of calculation of exchange differences is specifically laid out in legislation whereas the *GDF Suez* case was not about exchange losses but the treatment of the disposal of a loan relationship

- the accounting treatment did not lead to a manifest absurdity such that the need for an override was required

Overall therefore HMRC's appeal was dismissed. The term 'fairly represents' has been removed from the legislation by F(No. 2) 2015 Act, but the decision in this case could be relevant to open enquiries for earlier periods.

Contributed by Joanne Houghton

Interpretation of accounting standards

As detailed above, in *Smith and Nephew Overseas Limited & others v Revenue and Customs Commissioners* [2018] UKUT 0393, exchange losses on a change in functional currency were found to be a valid loss which were allowable as loan relationship debits.

There are have been a few other cases decided recently which have looked at accounting standards:

- In *The Union Castle Mail Steamship Company Ltd v HM Revenue and Customs* [2018] UKUT 0316 (TCC) the UT found that the accounting treatment of a loss on the derecognition of a derivative was a valid loss but could not be claimed as a loan relationship debit as it did not relate to the derivative; and

- in *GDF Suez Teeside Ltd v HMRC* [2018] EWCA Civ 2075, the court decided that loan relationship credits not shown in the accounts could, under tax law, be included as taxable being what fairly represented the profits to the company, and most recently

- In *Ball UK Holdings Ltd v HMRC* [2018] UKUT 0407 (TCC), the appeal concerned the role the FTT has in disputes on the correct interpretation of accounting standards.

Ball UK Holdings (Ball UK) is a UK holding company that is owned by a US corporation. Ball UK's activities consist of holding shares in its subsidiaries and making loans to and from group companies – all these activities were conducted in sterling. Up to December 2005 Ball UK's accounts were prepared in sterling.

In 2006, Ball UK entered into a $30,000 derivative with a group company that meant the company could change its functional currency to dollars by moving from SSAP 20 to FRS 23. With advice from PwC, Ball UK concluded that the effect of FRS 23 was to change the functional currency of the company to dollars that triggered a foreign exchange loss of £24.6M that the company claimed as a tax debit.

The reason behind changing the functional currency was that all material decisions in relation to Ball UK were taken in the US and the board of Ball UK only acted to legally resolve the decisions made by the US employees.

HMRC argued that the currency of the company should be in sterling as the company's functional currency and that the accounts were not prepared in accordance with UK GAAP as then required under FA 1996, s 85A. The FTT agreed with HMRC's appeal on the basis that the main principle of identifying the functional currency was the primary economic environment of the company and that autonomy was not the paramount test.

The appeal by Ball UK to the Upper Tribunal was summarised as follows:

> *'At the heart of this appeal is the question whether the correct interpretation of accounting standards, and specifically FRS 23, can be characterised as a matter of law or fact. If it is a question of law then this Tribunal may consider the question afresh. If it is a question of fact then, since an appeal may only be made on a point of law, the role of this Tribunal is limited to determining whether the FTT's conclusions were unsupported (or not sufficiently supported) by the evidence'*

The UT noted that accounting standards are not legal documents but are written for accountants for use by accountants – an accountant would not look to a lawyer to interpret them. Therefore, the question of whether an accounting standard has been applied correctly is a matter of fact not of law and professional accountants are best placed to understand them. The Tribunal's role is the proper assessment of these experts' evidence.

In looking at whether the FTT had reached conclusions which were supported by the expert's evidence the UT decided that the FTT did reach the right decision and the appeal by Ball UK was dismissed.

Contributed by Joanne Houghton

VAT

Default surcharge excuse (Lecture B1111 – 26.09 minutes)

Summary – A typhoon and lack of flights, both events beyond the company's control and causing severe cashflow problems, were a reasonable excuse as to why VAT was paid late.

Chameleon Technology (UK) Limited develops, manufactures and supplies energy smart meters. The company had been in the default surcharge regime from Period 07/15.

On 7 September 2016, the due date for the 07/16 return, Chameleon paid £30,000. Two days after the due date, the company requested Time to Pay the VAT due. HMRC agreed to staged payments (not a time to pay arrangement). Chameleon paid the balance due by three further payments with the last being paid on 7 October 2016. The company appealed against a 10% default surcharge of £17,599.56, for its failure to submit payment by the due date for this VAT period, arguing that it had a reasonable excuse for making the late payment.

HMRC maintain s108 Finance Act 2009 specifies that there is no liability to a default surcharge for a period where contact is made with HMRC prior to the due date in order to arrange Time to Pay. Because the Appellant did not make any arrangements prior to the due date for the period 07/16, the surcharge position is unaffected by this section. The Company's Finance Director says that on a number of occasions in August and early September 2016 he telephoned HMRC to discuss a TTP for VAT due in respect of 07/16. He was not able to speak to anyone and therefore left messages asking for a return call.

The company manufactures its products in China. Once the products are ready for despatch they look to arrange transportation either by air or sea for delivery to the customer in the UK. They only deliver in one off large quantities and consequently only have cash available when the goods are delivered to the customer and payment is made. The Company had planned for deliveries during August and September 2016, which if they had gone according to plan, would have seen the Company have no issue with cash flow/working capital. Unfortunately, two major logistical problems occurred, which meant that their cash flow receipts moved out by a number of weeks.

1. A typhoon in late July and early August caused the manufacturing factory in China as well as the supply chain feeding the factory with parts, to shut down for a number of days in August. This caused significant delays to the supply chain and production of their goods, which were due to be delivered during August 2016.

2. Apple had block booked air freight flights for the launch of its I-phone 7 which created a shortage of availability into the UK from China for the first two weeks of September 2016.

Decision

S71 VATA 1994 specifically excludes insufficiency of funds as being a reasonable excuse. However, the Tribunal said that it was necessary to consider the underlying causes of the insufficiency of funds.

It was clear that Chameleon had done everything it could to exercise reasonable foresight, due diligence and have due regard for the fact that its VAT was payable on the due date. It suffered two unforeseeable and significant cash flow interruptions created by logistics problems rather than a fundamental liquidity issue.

For reasons which are not clear, a Time To Pay discussion did not happen, but given the fact that Chameleon cleared a substantial amount of outstanding VAT very quickly the Tribunal accepted that Chameleon had every incentive to agree an arrangement. HMRC were under no obligation to agree time to pay but the fact that the issue was never discussed due to no fault on the part of Chameleon is in itself also a reasonable excuse.

The appeal was allowed and the surcharge discharged.

Chameleon Technology (UK) Limited v HMRC (TC06765)

R&C Brief 11/2018: VAT rule changes for higher education

From 1 August 2019, higher education providers in England who currently qualify for VAT exemption by virtue of being higher education corporations or designated institutions will need to be registered by the Office for Students (OfS) in the 'Approved (fee cap)' category under the Higher Education and Research Act 2017, if they are to retain the exemption.

There are no changes to the VAT law affecting education in Scotland, Wales and Northern Ireland.

Current position

VAT exemption currently applies to UK universities and their colleges, institutions conducted by higher education corporations (HECs) and other institutions that are designated as eligible to receive support from central funding.

There are changes to the way that HE providers are funded by the OfS from the start of the 2019/20 academic year. These changes require an amendment to be made to the statutory definition of an eligible body in Note 1(c) of Group 6 of Schedule 9 VAT A1994.

Paragraph 4.1 of VAT Notice 701/30 (Education and Vocational training explains that an eligible body includes 'a school, university, sixth form college, tertiary college or further education (FE) college or other centrally funded higher or FE institution' (defined as such under the Education Acts).

Revised VAT treatment

Note 1(c) currently refers to bodies that fall within subsections 91(5)(b) and (c) of the Further and Higher Education Act (FHEA) 1992, but subsection 91(5)(c) of FHEA 1992 will no longer apply to England once the Higher Education and Research Act 2017 fully commences.

Sub-section 91(5)(b) of FHEA 1992 will be amended so that this only applies to institutions in Wales.

In order to be bodies entitled to exempt their supplies, those English HE providers who are currently exempt by virtue of being HECs or designated institutions will in future need to be registered by the OfS in the Approved (fee cap) category.

All English HE providers who will become registered in the Approved (fee cap) category will also become entitled to exempt their supplies in future.

Note 1(c) and eligible status will not apply to other HE providers such as bodies that are registered by the OfS in the Approved category, or bodies that are not registered with them. However, such bodies may of course still qualify for eligible body status if, or to the extent that, they are covered by the other notes to Group 6.

The legislation will be laid in draft before Parliament and subject to parliamentary scrutiny and debate.

www.gov.uk/government/publications/revenue-and-customs-brief-11-2018-vat-rule-changes-for-higher-education

Sale of subsidiary (Lecture B1111 – 26.09 minutes)

Summary - VAT incurred by a parent company in connection with the intended sale of its subsidiary was not deductible as the sale was not connected to the parent's taxable activities.

C&D Foods, a Danish company, was the parent company of Arovit Holding A/S, also a Danish company, which owned Arovit Petfood, which, in turn, owned the other companies in the group. C&D Foods supplied management and IT services to its sub-subsidiary Arovit Petfood.

In 2008, a bank took ownership of the entire group following the non-repayment of a loan. As the bank intended to sell the group, it entered into consultancy agreements, on behalf of C&D Foods, for the purpose of the intended sale.

No buyer was ever found and the issue was the deductibility of VAT on the fees incurred by C&D Foods in relation to the proposed disposal.

Decision

Referring to its recent decision in SKF (Case C-29/08), the CJEU noted that a disposal of shares in a subsidiary could constitute an extension of the parent's activities and therefore come within the scope of VAT. The fact that the sale had not taken place was irrelevant

The CJEU observed that for a share disposal transaction to come within the scope of VAT, the direct and exclusive reason for that transaction must be 'the taxable economic activity of the parent company', or that transaction must constitute 'the direct, permanent and necessary extension of that activity'.

However, the purpose of the sale in this case was to settle the debts owed by the group to the bank. VAT incurred on related advice was therefore not deductible.

C&D Foods Acquisition ApS v Skatteministeriet (Case C-502/17)

Adapted from Tax Journal (16 November 2018)

VAT exemption on fundraising events **(Lecture B1114 – 13.23 minutes)**

Background

All charities and many non-profit making bodies can benefit from VAT exemption on income they receive from fundraising events. It is often forgotten (or not realised) that the exemption is available to organisations apart from charities, which I will consider in this session. I will also consider a recent first-tier tribunal case involving events organised by four Student Unions, which was won by HMRC, and why the events fell short of the requirements for the fundraising exemption.

Case reference: Loughborough Students Union; Keele University Students Union; Nottingham Trent Students Union; The Students Union at Bournemouth University (TC6571).

The law

Many advisers incorrectly think that the exemption on fundraising income is only available to charities registered with, say, the Charity Commission. But this is not correct and the clue is in the heading to Group 12 of the exemption schedule in VATA 1994, Sch 9: "Fund-raising events by charities and other qualifying bodies" (Author underlining).

The good news is that the opportunity for exemption also extends to many non-profit making bodies and is not just limited to charities. See Definition of a qualifying body.

Let us consider each reference in Note (3) and identify the non-profit making bodies that could qualify for exemption:

Part (a) - Item 1 of Group 9 refers to trade unions (and similar employment bodies acting for members); professional associations (such as the tax and accountancy bodies to which many of us belong); associations whose aim is to enhance knowledge or expertise or make representations to the Government on legislation and other public matters which affect the business or professional interests of its members; a body which has objects linked to political, religious, patriotic, philosophical or philanthropic motives.

Part (b) - this note is straight-forward – it applies to sports clubs but only those constituted on a non-profit making basis e.g. a members golf club run by a committee rather than a commercial club.

Part (c) – the reference to Group 13, item 2 relates to museums, galleries, zoos, art exhibitions and theatres – but again only a body that is 'precluded from distributing, and does not distribute, any profit that it makes.' The bodies must also be managed and administered on a voluntary basis by persons who have no direct or indirect financial interest in its activities and use any surplus made on admission fees to maintain or improve the facilities.

Definition of a qualifying body

For the purposes of the fund-raising exemption, Note (3), Group 12, Sch 9, VATA1994 defines a qualifying body as:

(a) any non-profit making organisation mentioned in item 1 of Group 9

(b) any body that is an eligible body for the purposes of Group 10 and whose principal purpose is the provision of facilities for persons to take part in sport or physical education; or

(c) any body that is an eligible body for the purposes of item 2 of Group 13.

The article considers the types of organisation that could qualify within (a) to (c) above.

Conditions to be met

So far, I have considered the bodies other than charities that could benefit from the fundraising exemption and hopefully many listeners are already thinking of clubs and organisations where there might be a potential opportunity. The next hurdle is to ensure that the function is classed as a 'fundraising event' and not just a social event that makes a profit. This was a problem for the student unions.

An organisation needs to overcome three hurdles to qualify for exemption, which applies to all event income, and not just receipts from ticket sales:

- EVENT - Identify an event to raise funds for the organisation, even better if you can establish a project for the intended surplus e.g. a new lawnmower for cutting the greens on the golf course, or new lockers for the changing rooms. The FTT case highlighted (correctly in my view) that a fundraiser needs to be a clear 'event' rather than a larger version of social activities that are already in place.
- SURPLUS - Ensure that the event is intended to make a surplus – there is no problem if it makes a loss due to factors such as bad weather or lack of support but it should be intended to be profitable.
- PROMOTION - Advertise it as a fundraising event on tickets and other promotional material and the organisation's website e.g. "Brindley Golf Club Fundraising Dinner"

Partial exemption

Most VAT registered charities and non-profit making bodies are familiar with partial exemption, and input tax that directly relates to a fundraising event will be blocked if all income is exempt from VAT, including the cost of venue hire, caterers and entertainers.

A planning tip is to ensure that at least one source of income is VATable. The input tax on costs will then move from 'exempt' to 'residual' under partial exemption where a percentage is recovered rather than nothing. The VATable income would need to be zero-rated because the law allows income that qualifies as zero-rated and exempt under different parts of the legislation to be zero-rated i.e. it gives a better result for the taxpayer. An organisation can't suddenly charge 20% VAT on exempt income to help its input tax position.

But what are these potential sources of zero-rated income?

- Children's clothing e.g. commemorative T-shirts
- Printed matter e.g. the sale of event programmes or other publications
- The sale of advertising time or space to a charity
- The sale of donated goods by a charity – as long as they are made available for sale to more than one person e.g. from a stall.

Brindley Golf Club fundraising dinner

The committee of this non-profit making club has decided to host a fundraising dinner and the ticket price (exempt from VAT) will include a three-course meal and guest speaker. The club will buy and sell copies of the speaker's autobiography at the dinner, making a £10 profit on each book. The zero-rated book sales mean that the overheads of the event (e.g. venue hire) will be treated as residual input tax and partly claimed. Without the zero-rated book sales, all input tax for the event would be linked to exempt supplies and therefore no claim could be made.

De minimis limits

As a final tip, don't forget to check whether input tax on event costs can still be claimed through the partial exemption de minimis limits. And although an organisation might be partially exempt in a VAT quarter, the quarterly figures are always superseded by an annual adjustment. The annual calculation runs to 31 March, 30 April or 31 May each year, depending on the VAT periods of the taxpayer, or 31 March for a business on monthly returns. The main de minimis test is as follows:

- Exempt input tax should be less than £625 per month on average, and also less than 50% of total input tax – so this is a potential annual windfall of £7,500;
- Exempt input tax includes input tax wholly relevant to exempt activities and also the proportion of residual input tax not claimed on mixed costs and overheads.

Reference: VAT Notice 706, section 11.

Student union VAT tribunal - learning points

An important conclusion from the student union cases is to be clear that the fundraising exemption in Group 12 is to be interpreted narrowly as an exception from the normal rule that goods and services are subject to VAT. In other words, a fundraising event must be different in the way it is organised and promoted compared to a normal social function. It has to deviate from the concept of 'business as normal.' The only event organised by the four unions that qualified as a fundraiser was the Summer Ball held in Bournemouth but this event failed to overcome another obstacle about distortion of competition – see final paragraph.

The best time to decide that an event will be a fundraiser is at the planning stage and it is important to be clear of the wording in the legislation (Group 12, Item 1(b) and 3(c)), namely that the “primary purpose is the raising of money” as far the exemption is concerned. So if having a good time and a few beers with friends is the main aim of a function, then the fundraising exemption will be irrelevant.

A final point that went against the unions was that the functions were deemed to be in competition with similar events organised by commercial suppliers (nearby bars and nightclubs) so the events failed the ‘distortion of competition’ requirement in Note 13 of Group 12.

Contributed by Neil Warren

Mixed supplies - Practical issues and recent decisions (Lecture B1115 – 12.12 minutes)

Background

A mixed supply situation occurs when a customer receives a bundle of goods or services where the items are subject to different rates of VAT. For example, if a retail store supplies a butter dish that includes a tab of butter, is this a standard rated supply of the dish (with the zero-rated butter being a minor item and ignored) or is it a mixed supply where output tax apportionment is needed? A recent case involving an ice rink went against HMRC in the First-tier Tribunal, which raises an obvious question: if HMRC can’t get it right, what hope is there for taxpayers?

Landmark CPP case

It is 20 years since the landmark case of Card Protection Plan Ltd (case ref: C-349/96) was heard in the ECJ, which we all hoped had resolved the mixed supply dilemma. The court gave some detailed guidance about how to determine whether a single or multiple supply was evident. It highlighted two key questions that need to be asked:

- Is there one main supply of goods or services with the other supply or supplies being ‘incidental’ or ‘ancillary’ to the main supply? If so, then the VAT liability wholly depends on the main supply;
- Is each supply an aim in itself? Does the customer expect to receive all elements of the supply as a priority? If so, this indicates a mixed supply. However, if the purpose of the second supply is to enhance the enjoyment of the main supply, then the second supply is ignored;
- Example – a cup of tea and biscuit provided by an airline during a flight is not a supply of standard rated catering. Its purpose is to enhance the enjoyment of the zero-rated air travel. The whole supply is zero-rated. However, a four-course meal with champagne on a luxury train journey would be a mixed supply of zero-rated travel (a form of transport carrying more than ten passengers) and standard rated catering;
- It is important to look at supplies from the perspective of the customer. So in the case of the train journey with four course meal, the customer would obviously complain if he was offered a cheese sandwich instead of the meal;

- Separate invoicing or pricing for the different elements is not conclusive proof of a mixed supply.

Three court hearings – caravan fuel

The long-running case of Colaingrove Ltd was heard in three different courts, the most recent hearing in the Court of Appeal went in favour of HMRC (case ref: [2017]BVC19). That made the score 2-1 to HMRC, so even the courts can't sometimes agree on this subject!

The issue was whether separate charges for gas and electricity made to holiday makers staying in caravans were subject to 5% VAT under VATA1994, Sch 7A, Group 1, or whether they were subject to 20% VAT because the charges were an element of a single supply of holiday accommodation in the caravan. The company operates 37 holiday parks and had an arrangement with News International Ltd that meant readers could book holidays in caravans and chalets at reduced rates.

The holiday maker was charged 20% VAT on the accommodation cost but only 5% VAT on a separate daily charge of £5.50 for gas and electricity. HMRC contended that the full payment related to the accommodation, and that the gas and electricity supply was 'incidental' to the accommodation and also standard rated i.e. adopting the CPP principles. The Upper Tribunal and Court of Appeal agreed with HMRC but the FTT controversially supported the taxpayer in the first hearing. The outcome is another example of the point I made that separate invoicing and payment does not necessarily indicate a mixed supply outcome.

Ice rink case and hiring skates

Here is the question considered by the court in the case of The Ice Rink Company Ltd & PI (Milton Keynes) Ltd (TC6117), a case won by the taxpayer:

> When a child goes ice skating at a rink and pays to hire a pair of skates as well as the admission charge to use the rink, does this involve one or two supplies for VAT purposes? In other words, is he or she receiving a single supply to use the rink with the skates included, or a separate purchase of skates and rink hire?

Note – the hire of skates by children is zero-rated (VATA1994, Sch 8, Group 16, Item 1). The admission charge is standard rated.

There was a lot of tax at stake in this case (in excess of £600,000), so it was very important to get the decision right. Here is the trading situation:

- The child arrives at the rink and the admission charge is, say, £12 for an hour's skating. The list behind the counter says skates will cost an extra £3 for an hour – so the total fee is £15, although many customers will bring their own skates so will not pay the extra fee. The output tax payable is £2.50 according to HMRC (VAT inclusive fee of £15) but only £2 according to the taxpayer (£2.50 is zero-rated).
- The child goes to the rink and discovers that the skates are broken and cannot be used. She returns them to the counter and, to her great disappointment, the rink has no other pairs of skates in her size and it would be unsafe for her to use a pair that is either too big or too small. So how much would the refund to the customer be? The answer is obviously £15 and not £2.50, so the skates are clearly needed as an aim in their own right. They cannot be classed as an 'ancillary supply' that is 'incidental' and can be ignored for VAT purposes.

> This is a very different situation to the cup of tea and biscuit provided during a flight that I mentioned earlier. If the cup of tea is not available because the aeroplane's kettle has broken down, then the flight will happily progress without any problems at all, other than having a few customers who are perhaps a bit thirsty by the time that the plane reaches its destination.

Written ruling from HMRC?

In areas of doubt, is it worth writing to HMRC for a clearance? This would hopefully give legal certainty and avoid a potential assessment on a future compliance visit. However, there are two potential problems with this approach:

- HMRC might just refer the business owner back to its published guidance and the principles to consider, and put the onus back on the taxpayer to reach a decision for the supplies in question. The comment that "VAT is a self-assessed tax" has developed momentum in HMRC's thinking in recent years. A lot of comment from the officer about the CPP principles to consider might be very helpful but it is still likely to leave the business owner with a dilemma about his mixed supply position.
- Based on HMRC's approach in the Ice Rink case and similar cases they have lost, the other danger is that an officer might conclude a bit too hastily that the correct outcome is the one that produces the higher tax yield for HMRC.

Another option could be for the business owner to 'play safe' and charge 20% VAT on the whole supply, knowing that HMRC will not challenge this conclusion. This might be worthwhile where the zero-rated element has quite a low value but an overpayment of VAT will reduce the profit margin of a business if pricing is made on a VAT inclusive basis (as with retailers), so prudence would come at a cost.

Conclusion

If a mixed supply is evident, then output tax should be apportioned on any fair and reasonable basis – there is no method specified in law. The most appropriate method might be an apportionment based on cost prices, particularly in the case of goods rather than services.

Finally, it is very important to always consider the customer perspective as a priority when reaching a VAT decision. Ask the question: what does the customer expect to receive when he parts with his money? And what will his behaviour be (and the trading outcome) if he does not receive some of the benefits in a bundle of goods or services? These two questions will hopefully lead to a sensible VAT outcome in most cases.

Contributed by Neil Warren

VAT Notes online ceases

From January 2019 HMRC will no longer publish VAT Notes online

Businesses can find out about VAT news in the 'Our announcements' section of the HMRC homepage of GOV.UK.

This change will allow HMRC to publish articles on a timely basis, rather than waiting for the next quarterly addition of the VAT Notes. You can sign up to receive email alerts when a new VAT article is published

Businesses that are exempt from online filing will continue to receive VAT Notes with their quarterly paper returns.

Supplies of digital services to consumers in the EU (Lecture B1111 – 26.09 minutes)

VAT rules if you supply digital services to private consumers in other member states will change on 1 January 2019.

From this date the place of supply will be the UK where both:

- a UK business is not established in any other EU member state; and
- the total value of their cross-border digital sales is less than £8,818 in the current and preceding calendar years

Businesses affected will no longer need to register for VAT in other EU countries where they have consumers or use the VAT Mini One Stop Shop Scheme (VAT MOSS). Where a business' turnover is below the UK VAT threshold they will also be able to de-register from VAT.

Businesses based outside of the EU but registered for VAT could not previously use the non-union VAT MOSS. This restriction is being lifted.

Businesses that register their business for the scheme, you will receive a VAT MOSS Return of their qualifying sales and payment each calendar quarter. HMRC will send the relevant parts of the return and payment to the tax authority of the country where their consumers are based. Businesses may still need to send a separate VAT Return if they have non-qualifying sales.

www.gov.uk/government/publications/vat-notes-2018-issue-4

Handling service fees (Lecture B1111 – 26.09 minutes)

Summary – The taxpayer was entitled to rely on Business Brief 18/06 meaning that they had correctly treated card handling fees as exempt.

Vacation Rentals acted as a booking agent collecting payments from holidaymakers on behalf of property owners. When payment was made by credit or debit card, it charged an additional fee for handling services.

In outline, Vacation Rentals followed HMRC's published guidance and treated services as exempt from VAT. However, HMRC issued assessments on the basis that services were taxable. The issue was whether Vacation Rentals had legitimate expectation that it would be taxed in accordance with the terms of the published guidance and if so whether HMRC was entitled to resile from that guidance.

In Bookit v CRC [2006] STC 1367, the Court of Appeal had concluded that card handling fees were exempt services.

It was found in that case that the supply comprised the following four components:

1. obtaining the card information with the necessary security information from the customer;

2. transmitting that information to the card issuers;

3. receiving the authorisation codes from the card issuers; and

4. transmitting the card information with the necessary security information and the card issuers' authorisation codes to the intermediary bank (known as the "merchant acquirer") which liaises between the card issuer and the taxpayer.

The fourth component of the service had the effect of transferring funds and therefore entailed a change in the legal and financial situation of the parties.

Following the Bookit decision, HMRC had issued Business Brief 18/06. This Brief identified the four components to the card handling supply which were present in the supplies made by the taxpayer in Bookit and stated that if an agent, acting for the supplier of the goods or services, makes a charge to the customer over and above the price of the actual goods or services, for a separately identifiable service of handling payment by credit or debit card, and that service includes the Fourth Component "then the additional charge will be exempt under item 1, Group 5 of Schedule 9 to the VAT Act 1994".

Vacation Rentals relied on this Brief, treating to own supplies as exempt.

HMRC disagreed and refused to apply the terms of Business Brief 18/06 to the Claimant's Card Handling Services made during the quarterly periods from June 2007 to September 2009 and issued assessments to the Claimant in the sum of £329,929 (plus interest).

Vacation rentals believed that HMRC's actions entailed a retrospective rewriting of BB 18/06 which is improper because they had a legitimate expectation that HMRC would comply with its own published policy regarding the their supply of Card Handling Services. Accordingly, Vacation Rentals contended that HMRC was not entitled to defeat that legitimate expectation by assessing its supplies as standard rated supplies and challenged the Decision, by way of judicial review.

HMRC accepted that the guidance contained in Business Brief 18/06 was capable of giving rise to a legitimate expectation but contend that, for the exemption to apply, in accordance with the terms of the four components, the agent itself must obtain the authorisation code from the card issuer and transmit it to the merchant acquirer, together with the card details and necessary security information. This envisages, HMRC contended, the agent, not the merchant acquirer, obtaining the authorisation code from the card issuer so that the merchant acquirer does not have the authorisation code until it is transmitted to it by the agent. HMRC contend that the supplies made by the Claimant did not satisfy the requirements of BB 18/06 because the Claimant transmitted the card information and security information to its merchant acquirer, and it received the authorisation code from its merchant acquirer.

HMRC contend that the supplies made by Vacation Rentals did not satisfy the requirements of BB 18/06 because Vacation Rentals transmitted the card information and security information to its merchant acquirer, and it received the authorisation code from its merchant acquirer.

Decision

The Upper Tribunal concluded that the guidance in Business Brief 18/06 was 'clear, unambiguous and unqualified'. The distinction made by HMRC between direct and indirect communications involving the agent and the card issuer was of no material significance. It did not have to be interpreted so that the exemption was limited to the precise facts of the Bookit case.

Business Brief 18/06 created a legitimate expectation and HMRC had not established any overriding interest that justified the frustration of that expectation. The brief was intended to be clear to the 'ordinarily sophisticated taxpayer'. The legal advice would 'almost inevitably' have been that the terms of the brief were clear and that the taxpayer's case fell within it.

The taxpayer's claim for judicial review was allowed. HMRC's decision not to apply Business Brief 18/06 was quashed.

The Queen on the application of Vacation Rentals (UK) Ltd (formerly known as the Hoseasons Group Ltd) v CRC, Upper Tribunal (Tax and Chancery Chamber), 22 November 2018

Delaying mandatory MTD (Lecture B1111 – 26.09 minutes)

On 16 October 2018, HMRC announced a delay of six months, until 1 October 2019, for the introduction of mandatory MTD for businesses with ‘complex requirements’. HMRC will shortly start issuing letters to all affected businesses. The deferral will apply to businesses falling into one of the following categories:

- trusts,
- ‘not for profit’ organisations that are not set up as a company,
- VAT divisions,
- VAT groups,
- those public sector entities required to provide additional information on their VAT return (Government departments, NHS Trusts),
- local authorities,
- public corporations,
- traders based overseas,
- those required to make payments on account, and
- annual accounting scheme users.

HMRC has advised that where a business does not receive such a letter by the end of December but believes that their business should qualify, they should contact HMRC on the VAT Helpline - 0300 200 3700.

Any business that has a taxable turnover of, or above, the UK registration VAT threshold (currently £85,000) and does not receive the letter below (and who does not otherwise qualify for exemption) must comply with MTD from 1 April 2019.

www.tax.org.uk/policy-and-technical/making-tax-digital

In its report, Making tax digital for VAT: treating small businesses fairly, the House of Lords Economic Affairs Finance Bill sub-committee believes that HMRC has not listened to the concerns of smaller businesses. They recommend delaying its introduction by a year and its extension to other taxes until at least April 2022.

The key findings of the report include:

- the costs to businesses of will be far more than HMRC's impact assessment;
- they are unconvinced that MTD for VAT will increase the tax collected;
- the government should publish its plan for the long-term development of MTD;
- the penalties regime should encourage taxpayers to remedy defaults by giving them a longer grace period before applying late payment penalties;
- HMRC must publish how it will communicate with and support taxpayers and agents across different levels of digital capability and skills; and
- the software industry has so far offered no free software products.

The CIOT and ATT share many of the committee's concerns about the potential increase in the tax take and business readiness for MTD. The professional bodies urge the government to allow time for a full evaluation of MTD for VAT before extending mandatory digital reporting to other taxes.

Adapted from Tax Journal (30 November 2018)