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Personal tax

Taxable benefits – time limit for making good (Lecture P1016 – 4.54 minutes)

In the context of benefits in kind, 'making good' refers to the situation where an employee makes a payment in return for the benefit which he has received. This payment has the effect of reducing the taxable value of the benefit on a pound-for-pound basis, often to zero, which therefore lowers the employee's taxable earnings.

An employee might make good if the employer requires the employee to make a contribution towards the cost of the benefit or if the employee is seeking to reduce the tax due on the benefit.

At present, there is a range of dates for making good – indeed, for some types of benefit, there is no date specified in the legislation. Employers have informed HMRC that the current regime causes difficulties and so they have asked for a greater degree of clarity.

Cl 9 FB 2017 originally set a date of 6 July following the end of the relevant tax year as the latest date for making good in relation to any benefits which are not accounted for in real time through PAYE (this practice is known as 'payrolling'). The taxable value of a benefit, together with the value on which Class 1A NICs are computed, will only be reduced if the benefit is made good by this date.

The new measure was due to have effect for 2017/18 and subsequent tax years and did not amend the rules for making good on benefits which are payrolled.

Although dropped from the Finance Bill that was enacted at the end of April, we can expect these changes to reappear in a second Finance Bill later in the year, once the general election has taken place.

Contributed by Robert Jamieson

Termination payments (Lecture P1017 – 6.26 minutes)

There was disappointment when HMRC published their response to the consultation document entitled 'Simplification Of The Tax And National Insurance Treatment Of Termination Payments'. This document arose out of a review by the Office of Tax Simplification (OTS) which highlighted the complications of the current termination payment system with the consequential likelihood of mistakes being made by the various parties involved.

The consultation document contained a number of proposals for amending the income tax and NIC treatment of termination payments.

Following feedback received, the Government have decided to:

- retain the £30,000 income tax exemption;
- continue with an unlimited employee NIC exemption;
- make all payments in lieu of notice subject to income tax and NICs as earnings, regardless of whether they are contractual or not;
- treat any other contractual payment (including amounts which employees would have received had they worked their notice period) as earnings subject to income tax and NICs;
- align the rules for income tax and NICs so that employer NICs will be due on termination payments in excess of £30,000;
- remove the foreign service relief (which wholly or partly exempts non-contractual payments from income tax where the employee has worked abroad for a significant part of his period of service); and
- make it clear that the exemption for injury payments does not extend to payments for injured feelings.

These changes take effect from 6 April 2018. The relevant legislation was set out in Cl 15 FB 2017. Although removed from the final Bill that was enacted ahead of the June general election, it seems almost certain that, whoever wins the election, these changes will go through in a second Finance Bill later in the year.

Expanding on some of the points above, it should be noted that FB 2017 split an employee's termination payment into two categories:

1. payments which can still benefit from the £30,000 threshold;
2. payments which cannot.

The employer has to identify the amount of basic pay which the employee would have received had he worked his notice period.

This is the case even if the employee leaves his employment part way through the notice period. The resulting sum will be treated as earnings and will not be subject to the £30,000 exemption. Basic pay for this purpose excludes any overtime payment, bonus, commission and gratuities.

All employees will be required to pay tax and Class 1 NICs on the amount of basic pay which they would have received if they had worked their notice period in full. This means that the income tax and NIC consequences will no longer depend on how the employment contract is drafted or on whether payments are structured to represent some other form of arrangement (eg. a payment for damages).

One's initial feelings about these provisions are:

1. annoyance that these amendments are likely to complicate the law rather than simplify it (which is what the OTS wanted);

2. regret that non-contractual payments in lieu of notice, which presently fall within the £30,000 exemption, will cease to do so;

3. surprise that the intention to impose employer NICs on termination payments in excess of the statutory limit will raise revenue for the Exchequer without there being any compensating adjustment to the – unaltered since 1988 – £30,000 threshold (the OTS suggested that any changes to the treatment of termination payments should be revenue-neutral);

4. concern that the introduction of NICs on termination payments over £30,000 will cause confusion among employers as regards when, and to what extent, such payments are chargeable or exempt; and

5. unease that the imposition of NICs on termination payments may make employers more inclined to reduce termination packages in order to compensate for the additional employment costs.

Finally, it should be noted that, although professional bodies such as the CIOT called upon the Government to rethink their plan to abolish the foreign service relief which has worked well over many years to provide an exemption where all or part of an employee's duties were performed abroad, the withdrawal of the relief is still going ahead.

Contributed by Robert Jamieson

Legal expenses and employees (Lecture P1018 – 5.23 minutes)

Cl 13 FB 2017 extends existing reliefs for employees (or former employees) who require legal advice or indemnity insurance which is funded by their employer.

Hitherto, such costs have only been deductible from an employee's earnings if that person has had allegations made against them in their capacity as an employee – see, in this context, S346 ITEPA 2003.

However, the new measure provides for equivalent deductions to be available in relation to proceedings where no such allegations have been made (or are expected to be made). This situation might arise where, for example, an employee is asked to give evidence before a public hearing at which he might require legal advice and support.

There is a similar relief for individuals in receipt of a termination payment so that a deduction can now be given if the relevant legal costs are met by the employer. Previously, a deduction was only available if the individual had paid the costs himself. This was thought to be unfair.

These amendments were due to take effect for 2017/18 and subsequent tax years.

Contributed by Robert Jamieson

Exemptions for employer-provided pensions and legal advice

HMRC has confirmed to the ICAEW tax faculty that employers should treat the changes for employer provided pensions advice and legal advice, which were dropped from the Finance Bill 2017 in the parliamentary wash-up before the general election, as having been effective from 6 April 2017.

Employers should continue to apply the guidance published alongside the Finance Bill in March (*Employment Income Manual* EIM 21802 on pensions advice and EIM 30509 on legal expenses).

The new income tax exemption will cover the first £500 worth of pensions advice provided to an employee. The legal expenses exemption extends existing reliefs to circumstances where no allegation has been made or is expected to be made against the employee.

The government has stated that there has been no policy change and, if re-elected, it intends to re-introduce the provisions at the earliest opportunity in the next Parliament.

Tax Journal (26 May 2017)

Pensions – two new restrictions **(Lecture P1019 – 9.25 minutes)**

Money purchase annual allowances

An individual's ability to make tax-deductible contributions to a registered pension scheme is subject to an annual allowance that, in recent years, has been set at £40,000. If the individual exceeds his annual allowance, the excess is subject to an annual allowance income tax charge that is levied at his marginal rate.

The revised pension regime introduced in April 2015 gave individuals with savings in money purchase pension schemes much greater flexibility in how they take their benefits from age 55 onwards. As a result, it was decided that such individuals should be subject to a modified annual allowance test in respect of their money purchase pension savings: this is known as the money purchase annual allowance and was originally fixed at £10,000 per tax year.

The purpose of this restricted money purchase annual allowance was twofold:

1. To deter pension savers from diverting income such as a salary into their pension scheme, on which they receive tax relief, followed by a withdrawal of 25% on a tax-free basis; and

2. To limit the extent to which pension savers can gain a second round of tax relief by taking out their pension savings and then immediately reinvesting them (a technique known as 'recycling').

Two years on, the Government believe that a money purchase annual allowance figure of £4,000 would be a fairer and more reasonable limit and so, following a short consultation period, the Chancellor announced that he would be reducing the money purchase annual allowance to £4,000 with effect from 6 April 2017 (Cl 16 FB 2017). Although removed from the truncated Finance Bill that was enacted at the end of April, it seems likely, that whoever wins the general election in June, that this proposal will go ahead in a Finance Bill later in the year.

As HMRC say:

> 'The reduction in allowance from £10,000 to £4,000 will limit the extent to which pension savings can be recycled to take advantage of tax relief, which is not within the spirit of the pension tax system.'

There are no other changes being made as to how the money purchase annual allowance will operate. Remember that any unused money purchase annual allowance – unlike its £40,000 counterpart – *cannot* be carried forward for use in later tax years.

Foreign pensions

Cl 17 and Sch 3 FB 2017 make a number of amendments to the rules for overseas pension schemes.

One change in particular should be noted. S575 ITEPA 2003 has for many years allowed a special deduction of 10% in respect of foreign pension income paid to a UK-resident individual (so that only 90% of the income was brought into charge for UK tax purposes). Unfortunately, for 2017/18 onwards, this facility has been removed: 100%, rather than the previous 90%, of a foreign pension will now be taxable in these circumstances (Para 2 Sch 3 FB 2017).

Contributed by Robert Jamieson

A problem with 2016/17 tax returns **(Lecture P1020 - 16.58 minutes)**

It is well known that, for many years, an individual's personal allowance, together with any other deductions which go against his general income (eg. losses), were offset in a particular sequence. This sequence was against:

1. non-savings income; then
2. interest; and finally
3. dividends.

This followed from S25(2) ITA 2007 which states that reliefs and allowances should be deducted 'in the way which will result in the greatest reduction in the taxpayer's liability to income tax'.

However, the introduction of both the personal savings allowance and the dividend tax allowance in FA 2016 has significantly complicated the position for 2016/17 onwards.

The personal savings allowance, which is effectively a form of nil rate band, stands at £1,000 for taxpayers who have no income subject to higher rate tax (or the dividend equivalent). In other words, the first £1,000 of interest received by such an individual is tax-free. An additional difficulty is the interaction of all this with the 0% starting rate band for savings income which has been £5,000 since 2015/16. It should be remembered that this 0% starting rate is only in point for recipients of interest whose non-savings income does not exceed their personal allowance plus a maximum of £5,000.

The dividend tax allowance, which is another nil rate band, has been set at £5,000, but, unlike the personal savings allowance, it applies to all individuals in receipt of dividend income, regardless of their marginal tax rate.

As a result, the order of set-off referred to in (a) above no longer holds good for some combinations of income, given the basic prerequisite that deductions must always be made in the most favourable way for the taxpayer.

Illustration 1

William has three sources of income for 2016/17:

	£
Business profits	5,400
Interest from gilt-edged securities	6,800
UK dividends	9,800

On the assumption that William's personal allowance of £11,000 is set first against his business profits and then against his interest, the income tax position is:

		£
Business profits		5,400
Less:	PA (part)	5,400
		£Nil

		£
Interest		6,800
Less:	PA (balance)	5,600
		£1,200

Given that no part of William's non-savings income is taxable, he is entitled to the 0% starting rate of up to £5,000 on his interest. In this case, all his remaining interest of £1,200 is therefore zero-rated.

William's dividend income of £9,800 is covered by his £5,000 dividend tax allowance, leaving £4,800 in the charge to tax at the dividend ordinary rate of 7.5%. This gives rise to a total income tax liability for 2016/17 of:

4,800 @ 7.5%	£360

However, this calculation does not produce the greatest reduction in William's liability to income tax. If, as an alternative, the personal allowance is set against his earned income (as before), but then only partly against the interest and partly against the dividends in order to maximise the benefit of the:

- 0% starting rate for savings income; and
- personal savings allowance,

William's tax position changes. His business profits are still tax-free, but, instead of using the balance of the personal allowance against William's gilt-edged interest, only £800 of the personal allowance is set against the interest. Thus:

		£
Interest		6,800
Less:	PA (part)	800
		£6,000

This balance is then extinguished by a combination of the £5,000 0% starting rate and the personal savings allowance of £1,000.

William's dividend position is:

		£
Dividends		9,800
Less:	PA (balance)	4,800
		£5,000

The remaining dividend income is covered by William's dividend tax allowance, leaving a nil income tax liability. This procedure has saved William a tax charge of £360.

Unfortunately, the waters involving interest and dividends now become even murkier. For two groups of taxpayer, HMRC's online filing parameters (which all tax software providers must follow) are such that individuals falling into either of the categories below will be overcharged by up to £1,000 if their returns are filed online. The only solution for 2016/17 is that paper returns should be submitted. It is understood that this issue will be fixed for 2017/18.

The taxpayers affected by this anomaly are individuals with:

- with an income of over £32,000 made up from savings and non-savings sources of which the non-savings income is between £11,000 and £16,000 (Illustration 2); and

- non-dividend income of between £27,000 and £32,000 which, together with dividends, takes their total income to more than £145,000 (Illustration 3).

Illustration 2

For 2016/17, Gareth is in receipt of a state retirement pension of £11,000, together with bank and building society interest amounting to £27,000.

As usual, his personal allowance is set against his pension. Thus:

		£
	Pension	11,000
Less:	PA	11,000
		£Nil

Because Gareth's non-savings income does not exceed £11,000, he is entitled to take advantage of both the full 0% starting rate band of £5,000 and the £1,000 personal savings allowance. His taxable savings income is therefore £27,000 – £5,000 – £1,000 = £21,000. This is charged at 20%:

21,000 @ 20%	£4,200

However, in this case, the tax software will not apply the savings starting rate which means that there will be a charge of 20% (rather than 0%) on the income falling within the starting rate band. In other words, the HMRC calculation will show Gareth as owing tax of £5,200. This represents an overpayment of £5,200 – £4,200 = £1,000 for 2016/17. In addition, there will be an adverse knock-on effect on his payments on account for 2017/18.

Thus Gareth must send in a paper return and this would conventionally have to be done by 31 October 2017.

HMRC have, however, indicated that, in these circumstances, a return can be filed at any time up to 31 January 2018 without attracting the £100 late filing penalty, given that the taxpayer will have a reasonable excuse for the late submission. Notice that, if the return is inadvertently filed online, it will not be possible to amend the return online and resubmit it, as would normally be the case. This is because the tax software thinks that the filed return is in fact correct. A paper amendment must instead be sent to HMRC, supported by a tax calculation, with a covering letter explaining exactly what has happened.

Illustration 3

In 2016/17, Charles has earnings of £28,000 and dividends amounting to £130,000.

Because of the level of Charles' income, he is not entitled to a personal allowance for this tax year. Therefore, his non-savings income is considered first. This income uses up £28,000 from the 20% basic rate band. Charles' dividends will therefore be taxed as follows:

	£
4,000 @ 0%	–
1,000 @ 0%	–
117,000 @ 32.5%	38,025
8,000 @ 38.1%	3,048
	£41,073

This tax must be added to the £5,600 charge on Charles' earnings, making a total of £5,600 + £41,073 = £46,673.

Unfortunately, in order to calculate tax on the dividends, the software for 2016/17 will treat the higher rate band between £32,000 and £150,000 as reduced by the full amount of the dividend tax allowance, whereas the correct reduction in this instance is £1,000. This pushes more dividends up into the 38.1% bracket. The tax on Charles' dividends will be wrongly computed as:

	£
113,000 @ 32.5%	36,725
12,000 @ 38.1%	4,572
	£41,297

Charles has been overcharged by the sum of £41,297 – £41,073 = £224. It will also be necessary for Charles to submit a paper return.

It is important to appreciate that this state of affairs is not the fault of the tax software providers. Their software has to follow HMRC's parameters because, if it does not, none of their online tax returns will be accepted. Sadly, they had no choice but to code their products to give an incorrect outcome.

Contributed by Robert Jamieson

Off payroll workers in the public sector and IR35 intermediaries
(Lecture B1016 – 11.11 minutes)

The intermediaries legislation ensures that individuals working through their own personal service company pay employment taxes on deemed salary for workers who are effectively working as employees for third parties.

Historically, responsibility for accounting and paying for the tax and NIC that arose from this deemed employment status fell on the intermediary company, who was allowed to make 5% deduction for 'notional expenses' in arriving at the deemed figure that was taxed.

From 6 April 2017 "Off-payroll working in the public sector" rules:

- move responsibility for deciding if intermediary workers fall within the IR35 rules to the public authority;
- require the public authority, agency, or third party to deduct and pay tax and NIC from the payments made to the personal service company.

Action needed

This new measure applies to payments on or after 6 April 2017 and so will affect contracts entered into before 6 April 2017 and operating after that date. Public authorities, agencies and third parties supplying workers to the public authorities need to consider existing contracts and prepare for the change.

To help them decide if the rues apply public authorities can use HMRC's employment status tool and/ or guidance (https://www.gov.uk/guidance/check-employment-status-for-tax).

However:

- Some public authorities are sending out questionnaires so you can help them decide whether IR35 applies;
- Others are simply saying they are applying the new rules!

It's worth noting that the new provisions do not apply where an:

- agency directly employs a worker and it operates tax and NICs on earnings it pays to the worker; or
- umbrella company employs the worker directly as an employee and does not contract using an intermediary (Some umbrella companies do not employ the

worker directly and use intermediaries - so this should be checked. If this is not the case then the normal rules apply).

Accounting for the tax and NIC

Broadly, the VAT exclusive amount invoiced by the personal service company must be accounted for as salary by the public authority through Real Time Information. However, the 5% deduction currently allowed to intermediaries is not available in the public sector.

The worker's personal service company is able to reduce the turnover it records to reflect the deductions made from the fee by theauthority.

Example – Rebecca

Rebecca works through her own personal service company, Rebecca IT Ltd and is engaged in a six month contract as an IT product designer at the Ministry's IT development centre. Under the terms of her contract Rebecca:

- IT Ltd invoices £7,200 per month to the Ministry including £1,200 VAT;
- works under the direction of a manager, agreeing her working hours with him;
- will not supply her own equipment.

Using the HMRC employment status tool, the off-payroll working rules apply and:

- The Ministry treats £6,000 as Rebecca's earnings and deducts £1,400 tax and £400 employee NICs that it pays to HMRC via RTI together with £700 employer NICs due.
- Each month, the Ministry pays Rebecca IT Ltd a total of £5,400, which is £4200 (6,000 – 1,400 – 400) for the services provided plus £1,200 VAT.
- Rebecca is not an employee of the Ministry and so will not be able to claim Statutory Sick Pay and Statutory Maternity Pay through their payroll.

Each month the company:

- raises an invoice for £6,000 plus £1,200 VAT
- can reduce turnover by £1,800 (Tax and NIC) as well as the £4,200 deemed salary so essentially cancelling out the sales invoice

The worker can be paid £4,200 'net' from their company without IT and NIC which is reported on FPS as a non-taxable payment or alternatively, dividends up to the amount of £4,200. There is no need to declare either of the PSC extracted £4,200 on the SAR as the P60 from public body will be where the income is reported.

When the contract comes to an end, the Ministry gives Rebecca a P45 as they would for a directly employed person who leaves their employment. The P45 indicates Rebecca has paid £8400 (1,400 x 6) tax and £2400 (400 x 6) NICs.

At the end of the financial year, because Rebecca has paid Income Tax on income going into the PSC, her accountant disregards this engagement when calculating any deemed employment payment due for Rebecca IT Ltd relating to other engagements. This ensures Rebecca will not pay tax and NICs twice on the same income.

Rebecca’s accountant includes the income from the engagement with the Ministry, with the other deemed employment payments received in the employment income section in her self-assessment tax return.

Example –Mikael

An employment agency, Workers 4 U Ltd specialises in supplying medical staff to the NHS. An NHS Trust has contracted the agency to supply them a mental health nurse for a year to cover a period of maternity leave.

Mikael is a mental health nurse who provides his services through a personal service company, Mikael Health Ltd and gets much of his work through Workers 4 U Ltd.

The NHS Trust have advised the agency that the worker they supply will be expected to:

- be part of a team working to a Head Nurse
- work a fixed shift pattern in one of their local units
- the shift pattern and location could change at short notice where necessary
- all equipment required to undertake the role will be provided
- parking is also provided at no cost to the worker

Using the HMRC employment status tool, the off-payroll working rules apply and so the agency tells Mikael that the invoice his personal service company sends them will be paid net of tax and employees’ NICs. The agency treats the full amount of the invoice, £2200 as Mikael’s earnings and deducts £250 tax and £200 employee NICs which it pays to HMRC via RTI with £200 employer NICs.

Example - Janice

Janice is a Project Manager and provides her services through her own company, Janice PPM Ltd. Her company has been contracted by Hospital Construction Ltd to project manage the building of a new wing at a hospital, managed by an NHS Trust.

The NHS Trust has agreed to pay Hospital Construction Ltd an amount of £500m in payment for the construction project. Hospital Construction Ltd is expected to pay their own staff and contractor costs for the project.

Janice’s role will involve her closely with the NHS Trust but her work is for Hospital Construction Ltd, which is not in the public sector. The off-payroll working rules do not apply

Example – Hamed

An employment agency, Teachers 4 U Ltd specialises in supplying teachers to local schools. A school has asked the agency to provide a supply teacher for a full school term to cover an unexpected absence.

Hamed, a supply teacher, provides his services through a PSC, Hamed Tutoring Ltd.

- He gets much of his work through Teachers 4 U Ltd.
- He is paid for his work, found through the agency by an umbrella company, Teeming Ltd who deduct tax and NICs from his salary and is responsible for paying secondary NICs.

As Hamed has been supplied by Teachers 4 U Ltd and has a contract of employment with an umbrella company, Teeming Ltd, the off-payroll working rules do not apply.

Example –Jasmine

Jasmine is a website designer who provides her services through her own company, Jasmine WWW Ltd. The company has been contracted by a local authority, Midshire CC to design and build a new website, through which local residents should be able to access and use their services.

Jasmine WWW Ltd's contract with Midshire CC means Jasmine will be expected to:

- deliver the website to an agree standard by the agreed date
- visit the council's offices for meetings, but will mainly work from her own office
- provided her own equipment needed to do the job in hand
- employ her own staff to help deliver the contract if she needs to
- cover her own costs and expenses

Jasmine's task is to design and build the new website. To do so, she will need to work closely with the council but will be largely unsupervised. Jasmine WWW Ltd has been contracted to provide a distinct product to the council and will bear the costs associated in delivering that. Although her work is for the public sector, Jasmine will not be performing a role that would be considered to be that of an employee and the off-payroll working rules will not apply.

https://www.gov.uk/government/publications/off-payroll-working-in-the-public-sector-reform-of-the-intermediaries-legislation-technical-note/off-payroll-working-in-the-public-sector-reform-of-the-intermediaries-legislation-technical-note

Tax exemption for participants in UEFA Champions League final

The draft Major Sporting Events (Income Tax Exemption) Regulations 2017 will provide for an income tax exemption for overseas players and officials (including UK residents in the overseas part of a split year) taking part in the UEFA Champions League final in Cardiff on 3 June 2017.

The exemption will be available for duties performed in the period from 1 June to 5 June 2017, but will not apply to contracts entered into once the final has commenced, or to amendments made after the final has commenced to contracts entered into before the final.

Levy paid by Swiss bank under the UK-Switzerland tax agreement

Summary – Failing to make a voluntary disclosure of her bank accounts under the UK-Swiss tax agreement resulted in nearly £58,000 being taken by Credit Suisse and passed on to HMRC.

In Vrang v CRC, Queen's Bench Division, 9 May 2017, a Swedish national worked for Credit Suisse in Switzerland between 1998 and 2005 and then moved to London. She had three bank accounts with Credit Suisse into which she paid her earnings while an employee of the bank and her Swiss pension.

Credit Suisse told her about the UK-Switzerland tax agreement and advised her that she needed to make a voluntary disclosure of her Credit Suisse accounts to HMRC. Failing to do so in 2013 Credit Suisse took £57,865 from her accounts, and passed it to the Swiss Federal Tax Administration that transferred it to HMRC.

The taxpayer asked HMRC to refund the money because she owed tax of between only £1,000 and £7,000 but HMRC refused so the taxpayer appealed.

Decision

The High Court said parliament had approved the operation of the agreement. The absence of provision for refunds was a consequence of the agreement, rather than an oversight.

Individuals who:

- chose to make a voluntary disclosure needed no refund provision;
- did not disclose details received a certificate resolving any tax liabilities in return for the levy and anonymity; no refund provision was required for them.

The judge added: '

> The agreement itself reflects the fact that, when assets are held in Swiss banks, normal routes to obtain the correct tax are somewhat inhibited, and other measures are required. But there must be consistency of treatment of those who are subject to the operation of the agreement, whichever option they took. That is the point at which the disparity becomes accepted in the process by those who do not opt for voluntary disclosure.
>
> A taxpayer might accept the disparity to maintain anonymity or because it was negligible or to his advantage.'

The taxpayer's appeal was dismissed.

Adapted from Taxation magazine (25th May 2017)

Capital Taxes

Non resident trading in the UK

Summary – Gains were not chargeable as they related to assets bought while the taxpayer was neither UK resident nor ordinarily resident.

Following a 2006/07 tax return showing no income or chargeable gains and the taxpayer claiming to be non UK resident, on 14 February 2013 HMRC began a "compliance check" into Elizabeth Marsh's income tax and capital gains tax requesting information about property owned during the period 6 April 2006 to 5 April 2008. This included the dates of purchase and sale, use of the property and details of any income received.

Her agent provided information about two properties:

1. Empty for a few months before sale but was let for nearly 3 years

2. Empty for 4 months before sale and 7 months overall, but let for 3 years.

Her agent also informed HMRC that their client was not resident in the UK between 6 June 2004 and 30 June 2006 and between 1 October 2007 and May 2008, meaning she was not resident in the UK for 2004/05, 2005/06 and 2007/08. However, HMRC argued that she was resident in 2006-07 and 2007-08 as the split years concession D2 did not apply and that even if she was non-resident, they believed that s10A applied.

Throughout 2014 there was correspondence about the calculation of the chargeable gains but then on 24 March 2015 the agent suggested that:

> "having held detailed discussions with my client about the nature of her activities, it is now clear to me that we need to re-examine the entire basis of her activities. I now believe that my client was trading in property and a Sch D1 is more appropriate."

Decision

The Tribunal found that the taxpayer was outside the UK from 30 June 2006 to 1 October 2007 and that HMRC accepted that she was non-resident in both years and relied on s 10A TCGA 1992 to charge the gains on the properties to CGT.

However, HMRC were criticised for using the wrong version of s10A TCGA 1992. The version of s10A TCGA that they cited was that applying currently. This section 10A was substituted for the previous version in FA 2013 as a result of the enactment of the statutory

The Tribunal concluded that there were four years between the year of departure2003/04 and return 2008/09 and that the taxpayer was resident for four out of the seven years of assessment immediately preceding the year of departure, meaning that S10A applied.

Under s10A TCGA 1992, all of the chargeable gains that would have accrued to the taxpayer in the “intervening years” would be chargeable on the taxpayer in the year of return.

However, under s10A(3), the gains were not chargeable as they were acquired in 2003-04 (year of departure) and 2005-06. (an intervening year). The taxpayer therefore had no liability to CGT for 2006-07, 2007-08 or 2008-09.

They considered that s10 TCGA 1992 does not avail HMRC as an alternative way of charging the gains. Section 10 can only apply at all if the taxpayer was carrying on a trade through a branch or agency in the UK and the gains arose from assets used in the trade. There was no evidence of a branch or agency.

Trading or investment?

As the gains were not chargeable, this point became irrelevant. However, the Tribunal believed that on the balance of probabilities there was no trade of property dealing carried on by the taxpayer but rather, having considered the badges of trade, the taxpayer was investing her money, not doing deals. They were influenced by HMRC pointing out that there was no hint or suggestion in the papers that the dealings in real property were considered to be a trade until February 2015.

They suggested that trading was suggested to enable £106,000 or so in outlays to become deductible in arriving at a trading profit but which are not deductible in a chargeable gains computation.

So to conclude the 2006/07 and 2007/08 assessments were reduced to nil as well as the related penalties.

Elizabeth Marsh v HMRC (TC05798)

Trusts and taxation of index linked loans

Trusts and estates newsletter (April 2017), HMRC confirmed that it will to write to all taxpayers known to have entered into arrangements under which trustees make loans to surviving spouses linked to the retail prices index. Such arrangements were relatively common before the introduction of the transferable IHT nil-rate band in 2007.

HMRC's view is that, where these loans have been repaid to the trustees, the uplift in value above the principal sum initially lent constitutes interest under ITTOIA 2005 s 369(1), on which income tax is payable.

Taxpayers will be asked to settle any income tax payable with HMRC. Where the trustees elect not to settle, HMRC will issue closure notices, against which there is the right of appeal.

Effect of HMRC's finding in previous years

Summary – HMRC could revisit a taxpayer's domicile status even if they had previously confirmed that status for an earlier year.

Mr Gulliver has a UK domicile of origin but following his education in the UK, he has had an international business career during which time he has spent a significant amount of time living in the Far East.

On 29 December 2015, HMRC opened a enquiry into Mr Gulliver's 2013/14 tax return and in particular his domicile status.

On 31 October 2002, Mr Gulliver had transferred overseas funds £273,677 to a discretionary trust established for the benefit of his family. This sum was above the nil rate band applicable for IHT and the contribution would, therefore, have given rise to an IHT liability of some £4,735 if Mr Gulliver were UK domiciled at any time in the three years leading up to the time of transfer.

At the time Hong Kong was Mr Gulliver's permanent home and the centre of his business and social life. They acknowledged that HSBC had asked Mr Gulliver to undertake a specific assignment in London but that this was expected to last for only two years after which he would return home to Hong Kong.

In a letter dated 4 March 2003 HMRC confirmed that, on the basis of information supplied, they would agree that Mr Gulliver had not made a transfer of value for the purposes of UK IHT having regard to s6(1) & 3(2) IHTA1984.

At the time, HMRC took a "risk based approach" to requests for confirmation of the IHT treatment of lifetime transfers that took into account the amount of the tax potentially in issue, and the chance of the taxpayer concerned being UK domiciled on the basis of the information provided. Applying that approach, HMRC did not consider it an appropriate use of resources to engage in a full enquiry into all aspects of Mr Gulliver's domicile given that the amount of tax in issue was only £4,735. He also concluded that there was not a high risk, based on the information provided, of Mr Gulliver having a UK domicile.

It was common ground that, by confirming that the transfer to the discretionary trust did not attract IHT, HMRC were accepting that Mr Gulliver had acquired a domicile of choice in Hong Kong.

Events turned out differently and Mr Gulliver has been resident in the UK for UK tax purposes for the past 13 years, during which period he became the Group Chief Executive of HSBC1.

Having opened their enquiry into Mr Gulliver's 2013/14 tax return, HMRC sent him requests for a large amount of information and a large number of documents. These requests were not limited to matters arising after 4 March 2003 (the date of the Letter) and involved a searching examination of a number of aspects of his personal and professional life dating back to 1981.

Mr Gulliver has appealed to HMRC against the information notice and has not to date answered all of HMRC's requests for documents or information. Rather, he has explained to HMRC that, in his view, HMRC concluded in the Letter that he had acquired a domicile of choice in Hong Kong in 1999 (three years before he made the contribution to the discretionary trust). On that basis, he has told HMRC that he considers that their queries, insofar as they seek to establish whether he acquired a domicile of choice in Hong Kong, are simply not relevant as that has already been established.

Decision

The First Tier Tribunal found that HMRC could open an enquiry into the domicile of a taxpayer even though it had accepted in an earlier tax year that the taxpayer was no longer UK domiciled.

It was common ground that HMRC had implicitly accepted that Mr Gulliver had acquired a domicile of choice in Hong Kong.

HMRC argued that it was not 'stuck with' its previous conclusions and the Tribunal agreed; a determination of fact made in relation to one tax year was not binding in relation to a later tax year. The Tribunal added that if Mr Gulliver considered that it would be unfair for HMRC to depart from its earlier position, he could seek judicial review of HMRC's actions.

As Mr Gulliver had not provided all the information required by HMRC, his application for a closure notice was dismissed.

S Gulliver v HMRC [TC05712)

New trusts register poses risk of identity theft

HMRC plans to launch the new trusts register in June.

All trusts with UK tax consequences will need to be registered and will be asked for:

- details of the trust assets, including addresses and values; and
- the identity of the settlor, trustees, protector (if any), all other persons exercising effective control over the trust (if any) and the beneficiaries or class of beneficiaries.

Beneficiary information will include;

- name;
- date of birth;
- NI number for UK residents; and
- address and passport or ID number for non-UK residents.

The new register is designed to implement the requirements of the EU Fourth Money Laundering Directive in the UK . However, the Information Commissioner's Office has warned that trust beneficiaries would at a risk of identity theft, if proposed EC amendments to the Fourth Money Laundering Directive are implemented to allow full public access.

Adapted from Tax Journal (May 19th)

Administration

Enablers – the new pariahs (Lecture B1019 – 10.11 minutes)

Cl 125 and Sch 27 FB 2017 were due to introduce an important new penalty regime aimed at ‘enablers’ of defeated tax avoidance schemes. Despite being removed in the truncated Finance Bill that was enacted at the end of April, it seems very likely that we will see the same provisions reappear in a Finance Bill later in the year, once the June general elelction has taken place.

The legislation is targeting any person who ‘enables’ the use of what are referred to as ‘abusive tax arrangements’.

What is an enabler?

An enabler is defined as someone who satisfies any of the following tests, ie. he was:

1. a designer of the arrangements;
2. a manager of the arrangements;
3. a person who marketed the arrangements;
4. an enabling participant in the arrangements (broadly, someone whose involvement was essential to their success); or
5. a financial enabler in relation to the arrangements (broadly, someone who provided a financial product which allowed the taxpayer to participate in the arrangements).

These descriptions are all explained in more detail in the legislation.

Abusive tax planning

Tax planning is deemed to be ‘abusive’ for these purposes if it represents arrangements the entering into or carrying out of which cannot reasonably be regarded as a reasonable course of action in relation to the relevant tax provisions, having regard to all the circumstances. This is nowadays referred to as a ‘double reasonableness test’.

Arrangements are held to have been ‘defeated’ when a final adjustment has been made to counteract all or any part of the intended tax advantage. In other words, the resulting tax charge can no longer be varied, on appeal or otherwise.

The penalty

The penalty charged in these circumstances is equal to the fee received by the enabler for his involvement with the defeated tax avoidance arrangements.

- Where a fee covers two or more transactions, it must be apportioned on a just and reasonable basis.

- Where the arrangements were entered into by multiple users, a penalty can only be levied if more than 50% of the arrangements have been defeated. Before any penalty is issued, HMRC must take account of any opinion given by the GAAR Advisory Panel in respect of the arrangements.

Any penalty notice is appealable and the Court (or Tribunal) must also take account of any opinion given by the GAAR Advisory Panel and *may* consider the effect of guidance, statements and other material which was in the public domain, together with any evidence of established practice, at the relevant time.

The penalty will apply to steps taken by an enabler in relation to arrangements entered into on or after the date of Royal Assent.

The enablers' penalty is a key development in HMRC's war against what they see as artificial tax planning and tax advisers are clearly in their sights. However, at the time when the original draft legislation was published (5 December 2016), HMRC stated that advisers acting wholly within the spirit of the updated 'Professional Conduct In Relation To Taxation' (PCRT) would not normally be affected by this new code. HMRC will be publishing guidance on the penalty provision later this year and it is expected that they will reaffirm their statement that compliance with PCRT should take professional advisers outside the scope of the regime.

Contributed by Robert Jamieson

Reasonable excuse for late submission of tax returns

Summary – The partnership had a reasonable excuse for not submitting its partnership return on time.

This case considered an appeal against penalties totalling £420 imposed by HMRC under Paragraphs 3 and 4 of Schedule 55 Finance Act 2009 for the late filing by the taxpayer of its Partnership tax return for the tax year 2011-2012.

The case involved a firm of solicitors. Miss Fawzia A Shuttari was the representative partner.

The partnership submitted a non-electronic partnership tax return, which was due by 31 October 2012, on 4 March 2013. It follows that the penalty date was 1 November 2012 and 3 months after the penalty date is 1 February 2013.

As the return:

- was not submitted by the filing date HMRC issued a notice of penalty assessment on or around 12 February 2013 in the amount of £100.

- had still not been received 3 months after the penalty date , HMRC issued a notice of daily penalty assessment of £320 on or around 12 March 2013, calculated at £10 per day for 32 days, (1 February 2013 to 4 March 2013 is 32 days).

The partnership appealed against the penalty saying that they had tried to complete the self-assessment online but were stopped from doing so as they did not have the relevant codes. They tried to comply but HMRC's system would not let them do so.

The partnership claimed that they had contacted their the agent on several occasions to make sure that the partnership tax return would be submitted on time. The agent did not respond to their calls and so they contacted their other accountant to deal with the matter but he advised that he could not access the online service as their firm's name had been removed from his list of clients. The partnership then tried to complete the form online themselves and also tried repeatedly to phone the HMRC Helpline number but all in vain. They claim that they were denied access as they were not enrolled to use the Online Service. In the interests of justice access should be allowed and they should have at least been allowed to obtain an emergency code to enable them to access the form.

On 2 April 2013 HMRC dismissed the appeal stating that there was no reasonable excuse for not sending the partnership tax return in on time because they should have applied for the correct software, and activation codes.

Following a review by HMRC they stated that:

> "If you employ an agent to complete and file your partnership tax return you remain responsible for ensuring that the return is received by the relevant deadline. Each partner remains liable to a penalty if the return is received late. HMRC does not accept failure by an agent is reasonable excuse for sending a late return."

The partnership appealed to the First Tier tribunal.

Decision

Penalties totalling £420 were therefore due unless the partnership could establish a reasonable excuse for the delay.

The Tribunal held that the partnership acted responsibly in checking that its agent had submitted the return. When it found that the agent had failed to do so, it immediately sought assistance from another agent. Once that agent reported that it could not help it tried to submit the return itself and then tried to get help from the HMRC helpline. It was hard to see what else the partnership could have done. Being unable to file electronically, the partnership had no choice but to file a paper return.

In the Tribunal's view the partnership had established that it had reasonable excuse for not submitting its partnership return on time. Where the reasonable excuse ceases the matter must be put right within a reasonable time. In the Tribunal's view the submission of a non-electronic return on 4 March 2013 put the matter right within a reasonable time.

Therefore the appeal against the late filing penalties of £420 is allowed.

Fawzia A. Shuttari T/A Shuttari Paul & Co. v HMRC (TC05791)

CIS reasonable excuse

Summary – Failing to appoint a replacement Finance Manager for 16 months was not a reasonable excuse for not filing CIS returns.

Visao Limited bought, renovated and then sold property and Mr Gray was in charge of the day-to-day running of the business.

On 7 November 2016 Visao Limited lodged an appeal in respect of £10,400 of penalties imposed under schedule 55 Finance Act 2009 in respect of failures to file Construction Industry Scheme returns in due time. The penalties covered the period February 2015 to July 2016 for which CIS returns should have been filed.

The Finance Manager had left their job in February 2015 and was replaced by an employee with similar aptitudes in August 2016. During this time Mr Gray focused his attention on the survival of the business that had been substantially damaged by the financial downturn and the downturn in property prices in 2008/2009. Although he knew about the need to file CIS returns he did not have the time to do so.

Was it a reasonable excuse to wait until a new Finance Manager was employed before the CIS statutorily required filings took place? If not, were the penalties charged appropriate?

Decision

CIS return documents are not amongst the most complex documents that businesses have to complete. Mr Gray did not suggest that it was not within his competence to attend to the necessary work.

The Tribunal held that it could not possibly amount to a reasonable excuse for a business to say that it realised that these statutory returns needed to be made, but that it could and should be excused in respect of its non-compliance because it chose to wait around 16 months to replace the employee who would usually be expected to file the necessary returns.

The issue of proportionality must be looked at in the light of each individual penalty. Mr Gray acknowledged that he was aware that penalties were accruing and that he knew that the company was in default of its CIS filing obligations. However, he did seem surprised to find that the amount of penalties had accumulated to a sum of £10,400.

Statutorily imposed filing obligations cannot be explained away and/or excused on the basis that the appellant got around to fulfilling them some 16 months later once a suitable employee had been engaged.

The appeal was dismissed.

Visao Limited v HMRC (TC05799)

Is going to prison a reasonable excuse?

Summary –Imprisonment was a reasonable excuse for not filing a tax return on time. Once the excuse ceased the default was remedied in time

The appellant was issued with a notice to file an income tax return for the tax year 2010/11 on 6 April 2011. That notice required the appellant to deliver the return by 31 October 2011, if filed in paper form, or by 31 January 2012 if filed electronically.

On 14 February 2012 HMRC issued a notice informing the appellant that a penalty of £100 had been assessed on him for failure to file the return by the due date.

On 16 July 2013 HMRC issued a notice informing the appellant that a penalty of £900 (£10 per day for 90 days) had been assessed on him for failure to file the return within the period of 3 months beginning with the day after the due date. That notice also informed the appellant that a penalty of £300 had been assessed on him for failure to file the return within 6 months from the penalty date and that a penalty of £300 had been assessed for failure to file the return within 12 months from the penalty date.

The return was filed electronically on 16 August 2013. As a result of that method of filing the due date was retrospectively fixed at 31 January 2012 and the penalty date at 1 February 2012.

The issue to be decided was whether going to prison was a reasonable excuse for late filing.

Decision

The deadline for the return was before the taxpayer's incarceration but the judge said 'de-imprisonment events' would have pre-occupied him. HMRC had produced no evidence to show the taxpayer had received a reminder to file his return or the penalty notices so he concluded that the taxpayer had a reasonable excuse and cancelled the penalties.

The judge said that HMRC would have had difficulty to show the six-month and 12-month penalties had been validly imposed as under FA 2009, Sch 55 para 24(2)(a), before HMRC imposed these penalties, it is required to determine the outstanding tax due to the best of its 'information and belief'. HMRC told the tribunal that its computer was programmed to issue a £300 penalty but not to 'interrogate any data it has about past liabilities'.

The taxpayer's appeal was allowed.

Thomas Richter v HMRC (TC05816)

Deadlines

1 June 2017

- Due date for CT liabilities for periods ended 31 August 2016 for small and medium-sized companies where payment is not required by instalments.

7 June 2017

- Due date for electronic filing and payment of VAT liability for quarter to 31 April 2016.

14 June 2017

- Quarterly corporation tax instalment for large companies (depending on accounting year end) to be filed by this date.
- EC sales list for quarter ended 30 April 2017 due (paper form) due.

19 June 2017

- Due date for PAYE/National Insurance contributions/ construction industry scheme/ student loan payment liabilities for month to 5 June 2017 if not paying electronically.
- File monthly construction industry scheme return by this date.

21 June 2017

- File online monthly EC sales list by this date.
- Submit supplementary Intrastat declarations for May 2017 by this date.

22 June 2017

- Electronic payment of PAYE/CIS liabilities for month ended 5 June 2017 should have cleared HMRC's bank account by this date.

30 June 2017

- Companies House should have received accounts of private companies with 30 September 2016 year end by this date.
- Companies House should have received accounts of public limited companies with 31 December 2016 year end by this date.
- HMRC should have received CTSA returns for companies with accounting periods ended 30 June 20156 by this date.
- CT61 — quarterly period ends.
- VAT partial exemption annual adjustments for March VAT year end to be made.

- Returns by savings institutions made under the European Savings Directive for 2016/17 must be received by HMRC by this date.

5 July 2017

- Last date for agreeing PAYE settlement agreements for 2016/17 tax year.
- Deadline for 2016/17 returns where agents pay rent to and tax deducted by tenants from rent paid directly to non resident landlords.

6 July 2017

- P9D, P11D, P11D(b) filing date and date copied to be given to employees.
- Employers must:
  - register 2016/17 employee share schemes and self certify if the scheme was tax advantaged;
  - file 2016/17 reports for reportable events connected to tax advantaged and unapproved share schemes;
  - elect that all close company beneficial loans to directors be treated as a single loan when calculating benefit in kind.

News

Election tax plans take shape

Conservatives

The Conservative party has given little detail on tax plans beyond what has been announced previously including those Finance Bill that were dropped being reintroduced early in the next Parliament. Among those receiving a specific mention are:

- increasing the personal allowance to £12,500 and the higher rate to £50,000 by 2020;
- reducing corporation tax to 17% by 2020;
- tougher regulation of tax advisory firms (penalties for enablers);
- further measures to reduce online fraud in VAT; and
- more proactive approach to transparency and misuse of trusts (trust register).

Their manifesto contains promises to:

- replace the pensions 'triple lock' in 2020 with a 'double lock', namely, rising in line with the higher of earnings or inflation, but not tied to a 2.5% increase.
- simplify the tax system;
- make sure people working in the 'gig' economy are properly protected, drawing upon the findings of the forthcoming Taylor Report; and

Labour

The Labour party's manifesto proposes:

- a 50% tax rate for those on earnings above £123,000, with the 45% rate applying to those with earnings above £80,000;
- an 'excessive pay levy' on companies paying 'very high' salaries (above £330,000).;
- corporation tax rates would increase to 21% from 2018/19, then 24% from 2019/20, and to 26% from 2020/21
- reintroduction of the small companies' rate of corporation tax on profits below £300,000 to 20% from 2018/19 and 21% from 2020/21.

Criminal Finances Act establishes new 'facilitation' offences

The Criminal Finances Act, which received Royal Assent on 27 April 2017, contains legislation for the new corporate offences of failure to prevent facilitation of tax evasion.

The new offences are expected to be in force by the end of September 2017.

Part 3 of the Act creates the two new offences for UK tax and foreign tax evasion offences. Businesses will be liable for the criminal acts of employees who encourage or assist tax evasion by others 'acting in the capacity of an associated person', which could include customers or suppliers, even if senior management was uninvolved or unaware of these acts.

The legislation requires the government to publish guidance about procedures that corporate bodies and partnerships within scope of the legislation might put in place to prevent those acting in the capacity of an associated person from committing tax evasion facilitation offences. It will be a defence if a company can show it has 'reasonable prevention procedures' in place. The latest version of draft guidance on the new offences was updated in October 2016.

The Act also introduces unexplained wealth orders (UWOs), requiring individuals to explain the origin of assets that appear to be disproportionate to their known income. A key requirement is that the value of the property subject to an order is greater than £50,000 (reduced from £100,000 in the Bill as originally introduced). A person could be convicted of a criminal offence if they make false or misleading statements in response to a UWO.

Toolkits published

On 9th May 2017 HMRC issued three updated Toolkits that are relevant to agents filing returns for 2016/17. The relevant Toolkits are:

1. HMRC Toolkit: Property Rental (2017) – see below

2. HMRC Toolkit: Directors' Loan Accounts (2017) – see below

3. HMRC Toolkit: Company Losses - The toolkit on Company Losses comes with a heath warning for next year when the rules on the treatment of losses undergoes substantial changes. These changes are not shown in this year's Toolkit as they are not relevant to 2016-17, however for future years the use of losses will be different to the treatment contained here.

www.gov.uk/government/publications/hmrc-company-losses-toolkit-2013-to-2014

Property rental (2017) toolkit

This toolkit is aimed at helping tax agents completing clients' 2016/17 self-assessment returns. It provides a checklist to use to ensure that nothing is missed and guidance on the errors that HMRC commonly come across. In addition to the useful checklist, the Toolkit runs through what HMRC consider the key risks to address and how to go about mitigating those risks.

HMRC highlight the main areas of risk for property rental business which fall into the following five categories:

1. Record keeping
2. Property income receipts
3. Deductions and expenses
4. Reliefs and allowances
5. General

Record keeping

Poorly kept records can mean that information provided on the tax return is not complete or accurate and may result in receipts being understated as well as expenditure or reliefs being claimed incorrectly.

Property income receipts

In addition to making sure that all gross rents and other receipts from land and property have been included as property income, HMRC highlight the need to check that:

- deposits have been treated correctly;
- the profit or loss on jointly owned property has been split appropriately;
- income from overseas rental properties has been treated as income of an overseas property business;
- where a property is being treated furnished holiday accommodation in the UK or EEA that all of the qualifying conditions have been satisfied;
- If surplus business premises have been let, and the rent receivable treated as a business receipt have all of the conditions been met.

Deductions and expenses

Rental business expenses must be incurred wholly and exclusively for business purposes and not be of a capital nature. Only the business element of expenses should be claimed and then only if revenue in nature.

The checklist asks the following questions:

- Have all items of expenditure on the improvement of an asset been treated correctly?
- Have any legal and other professional fees incurred in acquiring an asset been allocated appropriately?
- Has all expenditure on essential repairs to a newly acquired property been treated correctly?
- If expenditure incurred prior to the commencement of the rental business has been claimed have all of the conditions been met?
- Have any capital repayments been excluded from loan interest and other finance charges?
- Have any 'dual purpose' expenses been apportioned in respect of any property used only partly for rental business?
- If a vehicle has been used by a landlord for non-business travel, including home to work, has only the business travel been claimed?
- Are all expenses claimed by the landlord for business trips wholly and exclusively for the purpose of the rental business?
- Where wages and salary costs are being claimed, have employment taxes been applied appropriately?
- If there have been wages or salaries paid to relatives or connected parties are the amounts paid commensurate with their duties?
- If a property has been let rent free or at less than normal market rate has any expenditure been restricted accordingly?

Reliefs and allowances

Where a taxpayer lets a furnished room in their own house and wishes to claim rent a room relief, it is important to check that the conditions for this relief have been met and that any income over the Rent a Room exemption limit been treated as taxable rental income and the appropriate method applied.

Capital allowances can be claimed on items used within a furnished holiday letting business and on things like tools, ladders, motor vehicles. Capital allowances cannot be claimed on plant and machinery in a dwelling house. Instead, replacement of domestic item relief may be available where replacements for items are purchased in a residential. It is important to check that the correct relief or allowance has been claimed and on the correct amount.

General

There are particular issues relating to property income that affect the property pages of the Income Tax Self Assessment return. It is important to check:

- if the 5 April basis period has been applied;
- whether rental business losses have been set in full against the first available rental profits and that only appropriate losses have been set against general income;
- if a landlord is non-resident that tax has been deducted from the rental payments;
- that if box 21 of the property pages of the return has been completed that the correct figures have been included at box 20; and
- where there has been a disposal of a rental property that CGT has been calculated appropriately

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/611355/Property_Rental_toolkit_17.pdf

Directors' Loan Accounts (2017) Toolkit (Lecture B1018 – 11.00 minutes)

This toolkit, which applies to financial years commencing 1 April 2016 for Company Tax Returns, aims to assist tax agents by providing guidance on the common errors that HMRC come across in relation to directors' loan accounts. Broadly it covers expenses that do not form part of a director's remuneration package and its use is entirely voluntary. In addition to a useful checklist to use, the Toolkit runs through what HMRC consider the key risks to address and how to go about mitigating those risks.

A company may deduct expenditure if it is incurred wholly and exclusively for the purposes of the trade. As separate legal entities, companies do not incur personal expenses but many, particularly 'close' companies, pay for directors' personal expenses.

Where the expenditure:

- forms part of the remuneration package it will be an allowable expense of the company and the appropriate employment taxes should be paid.
- does not form part of the remuneration package the relevant amount should normally be debited to the director's loan account.

Record keeping

Poor records can result in inaccurate and incomplete information which may result in:

- non-business expenditure incurred by the directors being incorrectly recorded or misposted in the business records and claimed in error as an allowable expense.

- justifiable business expenditure incurred by the directors not being claimed or claimed inaccurately.

Review of accounts

A review of particular accounts headings may identify directors' personal expenditure that has not yet been allocated appropriately. Transactions should normally be recorded as they occur and a detailed transaction history maintained, so that it is possible to identify the director's loan account balance on any given date.

The Toolkit includes a checklist to help ensure that personal expenditure is identified and includes checking that:

- expense headings which could include non-business expenditure paid to or on behalf of directors have been reviewed to identify any non- business elements;

- any payments made to or on behalf of the directors as part of their remuneration package has been treated as employment income and all relevant employment taxes operated;

- any personal expenditure of the directors that does not form part of their remuneration package has been debited to the directors' loan accounts;

- any relevant credits to the directors' loan accounts have been calculated correctly;

- all transactions relevant to the directors' loan accounts have been posted contemporaneously.

Section 455 tax - Loans to Participators

Section 455 Corporation Tax Act 2010 charges tax where a close company makes a loan to a participator. It will apply to loans to directors who are also participators, and to participators who are not directors. It does not apply to directors who are not also participators.

S455 Corporation Tax Act 2010 will not apply where:

- the loan or advance was made in the ordinary course of business and that business includes the lending of money, or

- •relief under S458 Corporation Tax Act 2010 is due.

Following changes to dividend taxation, the S455 rate is now specifically matched to the relevant dividend upper rate in force. For loans made to or benefits conferred on participators on or after 1 April 2016, the new rate is 32.5%.

Loans or advances are often made to directors of close companies through their loan accounts. Where a director/ participator has a loan account that is overdrawn this should be reviewed to consider whether the company is liable to pay S455 tax.

The Toolkit contains a series of checks in relation to S455 to ensure that everything that needs to reported and paid is picked up and accounted for.

- If a director (who is also a participator) has a loan account that is or has been overdrawn, has the company paid tax under S455 Corporation Tax Act 2010 where appropriate? Has S455 been charged at the correct rate?

- If a loan chargeable to tax under S455 Corporation Act 2010 has been repaid, has any relief been claimed in the correct year?

- If a loan chargeable to tax under S455 Corporation Tax Act 2010 has been repaid, has the same or similar amount been withdrawn in the subsequent period?

- Have all loans been considered separately where appropriate?

- If any loans chargeable to tax under S455 Corporation Tax Act 2010 have been repaid by way of bonus or dividends, have these been credited correctly?

- Where a loan subject to tax under S455 Corporation Tax Act has been released or written off, have they been treated correctly?

www.gov.uk/government/publications/hmrc-directors-loan-accounts-toolkit-2013-to-2014

Agent Update 59 - April/May 2017

HMRC have issued their bi-monthly summary of the latest developments in tax, HMRC service and consultations for accountants and tax professionals.

Changes to tax relief for residential landlords

From April 2017, the rules on income tax relief for interest and other finance costs relating to residential property letting have changed. Individuals, partnerships, trusts and executors of deceased estates will no longer be able to deduct all their finance costs when calculating profits on residential letting. Individuals will have tax relief restricted to the basic rate.

https://www.gov.uk/guidance/income-tax-when-you-rent-out-a-property-working-out-your-rental-income

Worldwide Disclosure Facility (WDF)

Customers have until September 2018 to use HMRC's WDF to bring their offshore tax affairs up to date. Failure to make a disclosure and pay tax liabilities could lead to tougher penalties or a civil or criminal investigation

HMRC is developing a webinar aimed at providing agents with a clearer understanding of the technical aspects of the WDF, to enable a complete and correct disclosure to be made. HMRC expects the webinar to available from early Summer 2017.

https://www.gov.uk/guidance/worldwide-disclosure-facility-make-a-disclosure

Changes to the Company Tax (CT) Return form (CT600 Version 3)

HMRC has changed form CT600 Version 3. This is in response to the Chancellors 2016 budget for State Aid, Franked Investment Income and Restitution Interest.

There is a new supplementary page CT600K that applies where a company is chargeable to CT on any restitution interest that it has received from HMRC.

The revised CT600 Version 3, new supplementary page CT600K and amended CT600 guide can be found on the GOV.UK page *Corporation Tax: Company Tax Return (CT600 (2017) Version 3).*

Apprenticeship levy

From 6 April 2017 some UK employers need to calculate, report and pay a contribution towards the apprenticeship levy to HMRC through the PAYE process each month. Levy payers should use the Employer Payment Summary (EPS) to report any levy due and should pay the apprenticeship levy alongside tax and national insurance contributions by the 19th (or 22nd if paying electronically) of each month.

Employer clients will be able to see their apprenticeship levy data using their Business Tax Account after April. Agents will be able to view their clients' apprenticeship levy data through Agent Services from late summer 2017.

https://www.gov.uk/guidance/pay-apprenticeship-levy

Coding changes through personal tax accounts

The latest edition of Employer Bulletin provides information on how, from the end of May, HMRC will use real time information to make automatic adjustments to PAYE tax codes as they happen, rather than waiting until the end of the tax year. These changes will help more personal taxpayers pay the right tax on their income meaning more people will pay the correct amount of tax by the end of each tax year.

Until 31 May things will continue as they are. From then HMRC will send employee's tax code notifications at the point that they know that their circumstances have changed. They will continue to send a copy direct to the taxpayer and notifications to employers and pension providers as at present.

HMRC has issued a briefing note outlining how, from the end of May, it will start to use real time PAYE information already held within its systems to calculate in-year whether individuals are paying the correct amount of tax. Where a change of tax code is necessary, HMRC will send a tax code change notice explaining the change and encouraging the taxpayer to use their online personal tax account.

For those unable or unwilling to use the online personal tax account, HMRC will continue to provide telephone support and home visits where appropriate.

HMRC acknowledges that the new system could mean employers and pension providers will see an increased number of revised tax codes from May 2017, although these will be sent in batches, as at present.

Off Payroll working - student loan deductions

From 6 April 2017 reforms to off-payroll working in the public sector introduced a change to the way fee-payers (public authority, agency or other third party) pay for services from individuals engaged through an intermediary.

The fee-payer will:

- •be required to report the amounts deemed paid to the worker, including Income Tax and National Insurance contributions to HMRC. This should be done on or before the date of deemed payment to the worker on a Full Payment Submission (FPS).

- •not be required to report or deduct Student Loan payments from these individuals. Student Loan payments will be calculated and deducted from the individual's Self Assessment (SA) return based on their total income.

If the fee-payer receives a Student Loan Start Notice (SL1) and a Generic Notification Service (GNS) Employer Prompt for these individuals, they do not need to take any action and should file these away for their own records.

New pension guidance for advisers on increasing contributions

The minimum contribution levels for automatic enrolment are increasing, with the first phased increase being from 6 April 2018 and the second from April 2019. All employers will need to plan to make sure they are ready.

TPR has published new online guidance for advisers on these increases explaining what your clients' need to do and how you can support them.

Changes to requests by agents for pay and tax details and employment history

HMRC have seen a growing number of security issues related to requests from agents for their clients' pay and tax and employment histories through HMRC helplines. These include agents pretending to be their clients, and calling on behalf of clients who have not given the correct permissions.

From 2 May 2017, they will send the requested information directly to the clients, who will then be able to forward it to their agent for the relevant claim to be made or tax return completed. HMRC are working on a digital facility that will enable agents to access their clients' details securely online, which is expected to go live later this year.

However, clients can view, print and download their pay and tax details for CY and CY-1 from their Personal Tax Account.

Agent Toolkits 2017 Refresh

By the end of the summer HMRC will have completed their toolkit annual refresh. The following seven have already been completed:

1. •Expenses & Benefits
2. •National Insurance Contributions and Statutory Payments
3. •Capital Gains Tax for land & buildings
4. •Capital Gains Tax for shares
5. •Trusts and Estates
6. •Capital Gains Tax for trusts and estates
7. •Chargeable Gains for companies.

*https://www.gov.uk/government/collections/tax-agents-toolkits****CONSULTATIONS***

Beta trial of HMRC's Self Assessment Pre-population Application Programming Interface

From April HMRC commenced beta trials of an ITSA Pre-Population API to software providers. The API allows agents to retrieve client data used for pre-populating late SA returns, for the tax year 2015-16. Client data for 2016-17 will be made available through the API in the summer. The key features and use of the API are outlined below. Agents should contact their software providers for information on when the functionality will be available in their individual products.

Making Tax Digital for Business (MTDfB) and Agent Services

HMRC launched its MTDfB and Agent Services pilots on 3 April with a controlled "go-live" for a small number of invited businesses and agents. For agents, HMRC outlined details of both our pilots during two Agent Talking Points meetings on 28 and 29 March. Both of Talking Point sessions can be viewed at the agent toolkits, digital meetings and webinars page on GOV.UK.

www.gov.uk/government/publications/agent-update-issue-59

Pension schemes newsletter 87 - Scottish rate of income tax

From January 2018, HMRC will notify pension scheme administrators operating relief-at-source pension schemes of their individual scheme members' residency tax status, in time to apply the correct rate of relief for Scottish rate taxpayers from April 2018.

This newsletter provides information about submitting annual returns of individual information from 2018 onwards using the new Secure Data Exchange Service, which will replace the existing Secure Electronic Transfer system completely from 2019.

www.gov.uk/government/publications/pension-schemes-newsletter-87-may-2017

Self employment and the 'Gig economy'

Following an an inquiry which took evidence from representatives of companies such as Uber, Amazon, Hermes and Deliveroo, the House of Commons Work and Pensions Committee published its report on Self-employment and the gig economy..

The introduction of the new state pension has removed the last major difference between the entitlements of employees and self-employed, making it difficult to justify differing rates of NI contributions to the welfare system based on employment status.

The report:

- calls on the incoming government to set out a roadmap for equalising the NICs paid by employees and the self-employed.
- argues that government should close loopholes that incentivise companies to evade responsibility for their workers' wellbeing and increase their profits.

The committee recommends a default employment status of 'worker', rather than 'self-employed', which would entitle workers to employment rights commensurate with 'worker' status. As there is no 'worker' status in tax law, tax status would be unaffected.

Companies wishing to deviate from this model would need to present the case for doing so, in effect placing the burden of proof of employment status on the company.

Frank Field said of workers in the gig economy:

> 'this status would be a much fairer reflection of the work they undertake which seems to fall between what most of us would think of as 'self-employed' or 'employed'.'

sewww.parliament.uk/business/committees/committees-a-z/commons-select/work-and-pensions-committee/news-parliament-2015/gig-economy-report-published-16-17/

Brexit negotiating timetable

The European Council has given the formal go-ahead for the Commission to open the Article 50 negotiations with the UK. The Commission's chief negotiator, Michel Barnier, has outlined his provisional timetable for the negotiations.

The Commission's new Brexit Council working group will finalise its positions on the key subjects for the first phase of negotiations and send these to the UK 'very quickly' after the elections. This first phase will prioritise issues that have been identified as necessary for an orderly withdrawal of the UK, including:

- citizens' rights;
- the financial settlement;
- the border with the Irish Republic; and
- other matters in which there is a risk of legal uncertainty as a consequence of Brexit, including procedures based on EU law and goods already on the market.

Tax Journal (26 May 2017)

Repayment of withholding tax

Summary – The appeal to refer this case to the CJEU to answer certain questions was dismissed.

The dispute in this appeal relates to a claim for repayment of withholding tax in connection with stock lending transactions entered into by the Trustee in the tax years 2002-2003 to 2007-2008. The total amount of tax reclaimed is over £8.8 million.

The trustee of the British Coal Staff Superannuation Scheme held a portfolio of different UK and overseas shares. To make additional money from these shares, the Trustee entered into stock lending arrangements but with the borrower becoming the legal and beneficial owner of the shares enabling them to lend or sell them to other people during the period of the 'loan'. Consequently it was the borrower who received any dividends paid but contractual terms governing the stock lending agreement required the borrower to pay the Trustee equivalent sums to the dividends paid known as 'manufactured dividends' and 'manufactured overseas dividends' (MOD).

Where the manufactured dividend related to a UK company and the stock borrower making the payment was a UK resident company, the payment was treated as if it were receiving a dividend from a UK company. Since the Trustee is exempt from tax, this meant that it did not have to pay any tax on the receipt of such manufactured UK dividends and no tax was deducted at source.

With manufactured overseas dividends, a foreign withholding tax would normally be deducted from the amount received. Normally, that would give rise to the possibility of double taxation relief but relief was not available if the lender did not have a UK income tax liability. With the Trustee being exempt from payment of tax on dividends there would be no liability against which to set their tax credit.

The First Tier Tribunal considered whether the UK's refusal to repay the tax credits to the Trustee as a person who was exempt from UK tax on the MOD amounted to a breach of EU law as a restriction on the free movement of capital.

They held that the stock lending transactions did involve the acquisition and re-acquisition of foreign shares that did involve a movement of capital. They concluded that the Trustee would have suffered the overseas withholding tax if, rather than lending the shares, it had received the actual dividend directly from the company, net of the withholding tax imposed by the foreign tax authorities. There was no additional dissuasive effect in the MOD regime. The MOD regime did not involve a restriction on the movement of capital.

In addition, the Tribunal held that the MOD regime prevented what would otherwise be a straightforward way for pension funds to avoid the provisions which restrict credit for foreign withholding taxes. It was also justified on the basis of fiscal cohesion in the UK tax system.

The First Tier Tribunal therefore dismissed the appeal.

Before the appeal could be heard in the Upper Tribunal, the trustee applied for an immediate referral to the CJEU for certain questions which, the trustee argued, had to be answered before the tribunal could dispose of the appeal.

Shortly after the hearing of that application, the UK Government served Article 50 notice of its intention to withdraw from the European Union that would bring an end to the jurisdiction of the CJEU in the UK. That meant that any delay in referring the questions on EU law that arose in the present case might result in the appellant being peremptorily deprived of its ability to seek the assistance of the CJEU in resolving the EU-law based claim that had been made.

The principal issue for determination was whether the application for a reference should be allowed.

Decision

The Tribunal accepted that the appeal raised EU law issues and that the UK Government intends to bring an end to the jurisdiction of the CJEU in the UK. However, how this would be achieved had not yet been explained by the UK Government and some transitional provisions would need to be put in place. It would not be right for the Tribunal to pre-empt those arrangements.

The Tribunal rejected the submission that the triggering of Article 50 meant that it was a final court which was obliged to refer the case to the CJEU. The triggering of Article 50 did not alter the test that the Tribunal has previously applied when deciding whether, as a matter of discretion it should make a reference to the CJEU.

The Tribunal held that:

- It was difficult to decide at the present stage how many questions would need to be referred and on what issues. If the MOD regime did not constitute a restriction on capital, then the issues as to justification did not need to be resolved in order to dispose of the case.

- It would be better if the tribunal had a full grasp of both parties' contentions as to how the domestic regime operated before deciding whether a reference was necessary and, if so, what were the right questions to ask.

- The likelihood of the present case having repercussions beyond the facts of the present case and the tribunal cases awaiting the outcome of the present appeal was limited.

- There was an established body of case law from the CJEU both on the question of what constituted a restriction on the movement of capital for the purposes of art 56 TEEC (now art 63 TFEU) and on what kinds of grounds were available to the member state to justify the imposition of a restriction. It was true that there was no CJEU case law on whether an unlawful restriction arose in the present or very similar circumstances. However, the courts and tribunals were very familiar with the process of applying established principles to new sets of circumstances and it would not prove too difficult to do so in the present case. The same applied in relation to the question of justification.

The application was dismissed.

Coal Staff Superannuation Scheme Trustees Ltd v HMRC
Upper Tribunal (Tax and Chancery Chamber)

Business Taxation

How do the new finance charge rules work (Lecture B1017 – 13.00 minutes)

From 2017/18, relief for interest paid by an individual on a loan to purchase a residential property which is let out will be restricted. Note the restriction does not apply to interest paid on a loan to purchase a commercial property or a furnished holiday letting.

The aim is to restrict the amount of tax relief for the interest paid to the basic rate of tax. The restriction is being phased in over 4 years as follows:

	Amount of interest paid subject to restriction
2017/18	25%
2018/19	50%
2019/20	75%
2020/21	100%

So, in 2017/18, if loan interest is paid of £5,000, 75% of that amount (being £3,750) will be deducted in full in arriving at property income. The remaining 25% of £1,250 will only qualify for basic rate relief and will not be deducted from income. Instead, the relief for the interest subject to restriction will be given at the basic rate as a reduction in arriving at the individual's income tax liability.

In a tax year, relief at 20% is only available on the lower of:

- the interest subject to restriction (so £1,250 in our example);
- the property income for the year (less losses brought forward); or
- adjusted total income (being total income less savings and dividend income less the personal allowance).

Where the amount eligible for 20% relief is less than the amount of interest actually paid, the amount which is not eligible for relief is carried forward to the following year. It is then added to the amount of interest subject to restriction for that year.

Illustration 1

Lily has employment income of £50,000 in 2017/18. She owns a residential property which she lets out on a long term let.

The property income after allowable expenses except mortgage interest is £12,000. Lily pays mortgage interest of £3,000 in respect of the property in 2017/18.

Lily's income tax liability for 2017/18 is.

	Non Savings
	£
Employment Income	50,000
Property Income (W1)	9,750
	59,750
Less: Personal allowance	(11,500)
	48,250
Tax	
33,500 @ 20%	6,700
14,750 @ 40%	5,900
	12,600
Less: Tax reduction for interest (W2)	(150)
Tax liability	£12,450

Workings

Property Income

	£
Property income (before interest)	12,000
Less: Relief for interest (3,000 x 75%)	(2,250)
	9,750

In 2017/18, relief for 75% of the interest cost is deductible in full in arriving at the property income.

Tax Reduction

£3,000 x 25% = 750 @ 20% = 150

The interest subject to restriction of £750 is clearly lower than the property income or adjusted total income, therefore the tax reduction is 20% of £750.

Illustration 2

Mia has employment income of £20,000 in 2017/18.

She incurred significant repair costs in respect of the residential property that she lets out and property income (before relief for interest costs) is £2,800.

Mia paid total mortgage interest of £3,500 in 2017/18.

Mia's income tax liability for 2017/18 is:

	Non Savings
	£
Employment Income	20,000
Property Income (2,800 – (3,500 x 75%))	175
	20,175
Less: Personal allowance	(11,500)
	8,675
Tax	
8,675 @ 20%	1,735
Less: Tax reduction for interest (W)	(35)
Tax liability	£1,700

Working

Interest eligible for tax reduction is lower of:

- interest paid x 25% (3,500 x 25%) = 875
- property income = 175
- adjusted total income = 8,675

The tax reducer is therefore £175 @ 20% = £35

The interest paid which has not obtained relief of £700 (875 – 175) is carried forward to 2018/19. It will be added to the interest eligible for the tax reduction in 2018/19.

Illustration 3

Gordon and Mavis are married and together run a large residential rental property business. They have no other taxable income. They each spend 35 hour each week managing the business.

They have not run this through a limited company due to the historical difficulty in obtaining finance for buying the rental properties through this trading medium.

They generate gross rental income of £500,000 with non-finance cost expenses of £150,000 and finance costs on fixed interest, interest-only loans of £300,000.

2016/17

Rental business profits are £50,000, apportioned £25,000 each. They can both use their personal allowances of £11,000 so each has taxable income of £14,000.

Their income tax liabilities for 2016/17 are (20%) £2,800 each a total of **£5,600**.

2020/21

Rental business profits are £350,000 (the interest is now a tax reducer), apportioned £175,000 each. They lose their personal allowances at this income level.

Assuming the Government sticks to its pledge to raise the basic rate band to £50,000 and that the additional rate of 45% still applies to income above £150,000, each will have an income tax liability of:

£37,500 @ 20%	£7,500
£112,500 @ 40%	£45,000
£25,000 @ 45%	£11,250
£175,000	£63,750
Less tax reduction: £150,000 x 20%	(£30,000)
	£33,750

The total tax liability for them both will be **£67,500**. This is on a rental profit net of the interest cost of £50,000 giving an effective rate of 135%.

The unincorporated structure of their business is not going to be effective going forward and they should consider incorporating the business.

Alternatives to incorporation?

Fees can be a barrier to SDLT free property incorporations so simpler options could be considered. Such options would include:

Sell some properties to reduce gearing

…28% CGT bill might be cheaper!

Move some buy to lets into FHLs

….some properties may lend themselves to FHL

…..FHLs are not subject to the new rules

Crunch the numbers to see what the impact on your client is

….might be bearable

….especially if some are sold or FHLs a possibility

Incorporate but claim other SDLT reliefs to reduce the SDLT to a manageable sum

…multiple dwellings relief (SDLT averaging)?

…..six or more dwellings (commercial rates)?

Cash basis for landlords

Introduction

Since April 2013, unincorporated businesses with turnover below the VAT registration threshold have been given the option of using the cash basis to calculate taxable profits. However, property letting businesses were excluded from adopting the cash basis.

In the March 2016 Budget, the government announced that it would explore options to simplify the tax rules for businesses, self-employed people and landlords.

From 6 April 2017 individuals with income from a property business with rental income of up to £150,000 must use the cash basis. However, landlords may elect to opt out of using this basis to continue as before using generally accepted accounting practice to calculate their taxable profits:

- This election will only take the landlord out of the cash basis for one tax year;
- Where a landlord has more than one property they can choose to opt out of the cash basis for one property business and not for the other. So for example, their overseas property business could adopt a different treatment to their UK property business;
- Those with a trade as well as a property business both eligible for the cash basis will be able to decide separately for each of these

Jointly held property

Where the property business is owned by a married couple or civil partners both individuals must use the same approach, either both use the cash basis, or both use GAAP accounting for their property income.

For others, each individual owner can independently decide whether to opt out of using the cash basis or not. When one owner stays in the cash basis, another opts out, the accounts for the property business will have to be drawn up twice under both sets of rules.

Partnerships can use the cash basis for a property business, but only where all the partners are individuals. LLPs, companies, trustees and personal representatives are not permitted to use the cash basis for property businesses.

Interest restriction

Unfortunately from 6 April 2017 there will be two restrictions that need to be taken into account when claim relief for finance costs. Both of these will apply irrespective of whether the landlord adopts the cash basis or GAAP.

New rules are being transitioned in over the next four tax years so that by 20/21 finance costs will no longer being claimed as a tax deduction against rental income saving tax at the taxpayer's marginal rate but rather given as a tax credit against tax payable with relief restricted to the basic rate of tax. Do remember that the restrictions will apply only to the proportion of the interest and finance costs which relate to the dwelling-house letting and not commercial property. The legislation does not stipulate how the apportionment is to be made, other than that it must be on a 'just and reasonable basis'. This is an area that we have covered in detail in previous months and so will not revisit the detail here.

The second restriction determines how much of the loan costs are actually available for relief and so needs to be considered before the new rules above. Relief for allowable loan costs is restricted where the capital value of the business portion of loans outstanding (CVBL) exceeds the value of the let properties (VLP) by applying the fraction VLP/CVBL. In performing this calculation the value of let properties is taken as the market value of the properties when first let, plus the cost of any capital improvements.

Example

Where a taxpayer has business property loans outstanding of £800,000 on properties that it lets out that are worth £720,000, only 90% (720/800) of the loan costs will be available for relief. If the total loan costs were £70,000 then only £63,000 (90%) is available for relief.

In 2017/18, the first year of the transition to relief as a tax credit, 75% of the £63,000 (£42,750) will be deductible from rental income and the remaining £15,750 (25%) used to calculate the tax credit available at 20%.

By 2020/21, nothing will be deductible against rental income. £63,000 of loan costs will be available for relief as a tax credit at a rate of 20%.

Adapted from an article by Accountancy Age by Rebecca Cave (7th March 2017)

Winning the America's Cup

Summary – Although considered to be a trade, loss relief was denied as the activities were not run on a commercial basis with the intention of making a profit.

TeamOrigin LLP was an entity set up by Sir Keith Mills, a highly successful entrepreneur, to enable a sailing team to compete in the America's Cup. In addition to participating in and hopefully winning the America's Cup, the plan was to earn income by way of sponsorship, merchandising, and hosting rights.

This appeal considered:

1. Whether the activities of TeamOrigin LLP were a "trade" or, were the activities in aid of Sir Keith's personal ambitions to bring the America's Cup home minimising the cost through raising sponsorship and other income and where, if that could done at a profit, that would simply be a bonus.

2. If there was a trade, was it carried on on a commercial basis and with a view to the realisation of profit for the purposes of s66 Income Tax Act 2007 enabling relief for losses incurred by Sir Keith of:

    2007/8: £9,499,520

    2008/9: £6,462,338

    2009/10: £6,851,869

    2010/11: £9,429,975

Decision

The Tribunal held that the activity of seeking to obtain sponsorship income with the possibility of unlocking merchandising and hosting income and a possibility of profit even it that was not realised and when conducted within a business-like set up, was a trading activity.

However, not only was there a low prospect of success but the anticipated returns when compared to the amounts expended were modest. Both these factors point towards the activity being entered into for some reason other than realisation of profit.

The Tribunal held that commercial sponsorship, merchandising and the contemplated hosting income were activities that amounted to a trade but that the trade was not carried out on a commercial basis and with a view to realisation of profit and so loss relief was denied.

Sir Keith Mills Team Origin LLP V HMRC (TC05844)

Extension of hybrid mismatch rules

MEPs amended the EU's anti-tax avoidance directive to prevent multinationals taking advantage of mismatches between EU and third countries' tax rules to reduce their tax bills. The resolution was approved by 591 votes to 36, with 12 abstentions.

"These arrangements are frequently used by the largest companies with the sole purpose of reducing corporate taxation. We have seen it in both the Apple case and in the McDonald's case. It is about time these corporations paid their fair share of taxes," said rapporteur Olle Ludvigsson (S&D, SE).

If EU ministers back these amendments, corporations established in two jurisdictions, will no longer be able to have the same expenditure deducted from tax in both jurisdictions.

MEPs also want to put an end to the practice of having a payment recognised as tax deductible in one jurisdiction but not recognised as taxable income in the other.

The report now goes to the Council for their consideration and final approval.

www.europarl.europa.eu/news/en/news-room/20170424IPR72042/meps-close-multinationals'-tax-loophole

VAT

VAT on B2C mobile phone services

HMRC is consulting until 19 May 2017 on draft regulations (the draft Value Added Tax (Place of Supply of Services) (Telecommunication Services) Order 2017) which would remove the use and enjoyment provisions for business to consumer telecommunication services.

The change would mean UK VAT will be charged on all telecommunication services used outside the EU by UK consumers, and will bring the UK rules in line with the international approach agreed at the OECD.

The change is expected to come into effect from 1 August 2017.

Failure to register on compulsory basis

Summary – working overseas making it difficult to receive communication from HMRC was not a reasonable excuse but the penalty was reduced.

Dance with D Limited carries on a business of theatrical production. The business exceeded the VAT threshold in December 2011 but a form VAT1 was not submitted to HMRC until 13 May 2014, requesting VAT registration from the earlier date of 1 December 2011. The application was accepted.

The business advised that it had not been appreciated that the VAT registration threshold had been exceeded because of the involvement of connected parties in the supplies and receipt of income from overseas.

The net tax liability due was confirmed to be £347,221.72 and on 9 September 2014, HMRC advised that they intended to charge a penalty, with a calculation of the amount due. On 17 November 2014, HMRC issued a Notice of Penalty Assessment for the amount of £41,666.00.

On 25 June 2015, the appellant appealed on the basis that special circumstances should apply to reduce the penalty as the appellant acted as soon as it was aware that it should have been registered and there had been no intention to fail to comply with the law. They argued that the reason for the delay was that the appellant "is in the entertainment industry and travels around the globe so he does not have access to snail mail if its arrives in his absence ... it is absurd to expect a business to employ someone just to open HMRC's snail mail and forward it when he is the other side of the world. We dispute that [the appellant] did not action this in a timely manner given his circumstances with his work";

Decision

The Tribunal held that there were no unusual complexity in the business and no evidence was presented to explain why the appellant's business had particular difficulties with regard to identifying its VAT liability that would not have applied to other taxpayers in a similar position.

They did not consider that the nature of the business amounted to special circumstances and reliance on a third party cannot amount to a reasonable

It was agreed that failure to register for VAT was non-deliberate and the disclosure was unprompted. The penalty for an unprompted disclosure made more than twelve months after the tax became due is 30%, which may be reduced by the quality of disclosure to no less than 10%. In this case, the penalty was reduced by HMRC to 12%.

HMRC gave only a 25% reduction for "Telling", rather than the full 30% reduction possible. The reason for this was stated to be delays in correspondence, but HMRC have also accepted the appellant's explanation for the delay in correspondence.

On that basis, the Tribunal increased the reduction to 30%. They do not consider that the reduction for "Helping" should be increased further as the appellant failed to make proper provision for correspondence in his absence, particularly once correspondence with HMRC on these matters had begun.

The Tribunal dismissed the appeal as to special circumstances but substitutes the penalty of £41,666.00 with a penalty of £38,194.

Dance with Mr D Limited v HMRC (TC05839)

Puppies for sale

Summary – Puppies sold to the public as pets did not fall within the second goods scheme for VAT.

Little Rascals Pets Ltd trades in puppies with around 100 puppies on its site at any one time, of which around half were from home breeding and half bought in. Typically the puppies were sold between the ages 12 and 14 weeks with selling prices ranging from between £400 and £1,500. As you might expect, buyers were usually private individuals buying the puppies as family pets.

The taxpayer accepted that where the puppies were home-bred, output tax was due on the full selling price and the same applied to puppies bought in from VAT registered breeders where VAT had been charged on the purchase price.

The issue arose over the VAT treatment of puppies bought from non-VAT registered suppliers. The company argued that such sales fell within the margin scheme for second hand goods whereby a business only accounts for output VAT on its profit margin, rather than the full sales value.

Decision

Puppies that were bought in from breeders had been treating them as trading stock items and as such, had no 'prior use'.

To qualify as second hand goods, there must have been “prior use” before they were bought by the business which clearly was not the case with the tribunal judge commenting:

“On the evidence we heard the appellant did not satisfy us that the breeders used the puppies as pets in their first eight weeks of life.”

The appeal was dismissed.

Little Rascals Pets Limited v HMRC (TC05811)

Holiday accommodation and electricity

Summary – Electricity supplied as part of a caravan rental was a single composite supply.

Colaingrove ran a holiday park hiring out serviced chalets and static caravans. Under the terms of the holiday let, customers would pay a sum for the accommodation as well as the use of site facilities, including electricity.

Holiday rentals are a standard rated supply while the supply of electricity is subject to a reduced charge. Referring to EC v France (Case C-94/09), the Court of Appeal noted that the CJEU had accepted that member states could apply a reduced VAT rate on an individual item of a single supply, subject to the principle of fiscal neutrality.

HMRC argued that when renting a caravan, the supply of the caravan plus electricity were part of a composite supply of holiday lets and were therefore standard rated.

Decision

The Court of Appeal found that the supply of electricity as part of the supply of holiday accommodation was not a reduced-rate supply.

The Court of Appeal highlighted that s 29A was not on use but on the description of the supply. The fuel charge was functional in that it applied to domestic use but it did not follow that all domestic use was included. Furthermore, the purpose of the reduced charge may have been to only help people in their homes, rather than 'subsidising the prices of self-catering accommodation for holidaymakers'.

Colaingrove v HMRC [2017] EWCA Civ 332 (4 May)

No invoices

Summary –HMRC were entitled to disallow claims for input tax where no VAT invoices had been raised.

Mr Boyce's bought, sold, supplied and exported new and used motor 'prestige' vehicles.

He purchased most of his vehicles for sale to a customer who was based in Singapore but used named purchasers to purchase the vehicles from the dealerships.

Consequently, the dealerships' invoices referred to the named purchasers rather than Mr Boyce.

Since Mr Boyce had no purchase invoices in his name, HMRC had disallowed over £100,000 of input VAT. They had also refused to exercise their discretion under the VAT Regulations, SI 1995/2518, reg 29(2).

The First Tier Tribunal had allowed Mr Boyce's appeal. HMRC had appealed to the Upper Tribunal.

Decision

The Upper Tribunal found that the First Tier Tribunal had erred in law in allowing Mr Boyce's appeal. Mr Boyce had chosen to enter into transactions in such a way that he did not obtain valid VAT invoices, which are required to reclaim input tax.

HMRC v J E Boyce [2017] UKUT 177 (5 May)

Can catering and entertainment be treated as exempt education?

Summary – CJEU found that supplies of catering and entertainment services by a college, as part of the technical training of its students, were exempt supplies under article 132(1)(i) of the Principal VAT Directive.

Brockenhurst College ran courses in catering, hospitality and the performing arts which normally would be exempt from VAT.

The college looked to provide students with practical experience under the supervision of the teachers and so also ran a restaurant and stage performances which were open to the public at a reduced price. They argued that the catering and entertainment were exempt as supplies 'closely related' to the provision of education.

Decision

To be 'closely related' to education services, services must be ancillary to the education provided by the relevant establishment, which must constitute the principal supply.

The court accepted that the practical training was an integral part of the course and were essential in guaranteeing the quality of the principal supply of education.

The college was not looking to make money from these activities as the supplies were offered to a limited number of people and charged at 80% of their costs.

Educational institutions in similar circumstances may wish to consider the implications of the judgment.

HMRC v Brockenhurst College (Case C-699/15) (4 May),

Estate agent and the flat rate scheme

Summary – Estate agent should have reduced the flat rate that they were using.
In *Hylton Hill (TC05717)*, an estate agent had been using the flat rate scheme since July 2006 using the 11% rate for estate agents.

Following the increase in standard rate Vat from 17.5% to 20%, the rate for estate agents rose to 12%. Following a compliance visit, it was discovered that the estate was still using the old rate.

The taxpayer appealed to the First Tier Tribunal arguing that HMRC had not notified them in writing of the change. Publishing them on the HMRC website and notification via VAT notes that the rate had changed were not enough.

Decision

The First-tier Tribunal held that the taxpayer was responsible for ensuring he was paying the correct amount. The old days of where everything was sent out in the post have gone. It is up to the taxpayer to ensure that they were paying the correct VAT.

The taxpayer's appeal was dismissed.

Adapted from Taxation magazine (4 May 2017)

Deregistering from VAT – practical tips **(Lecture B1020 – 15.35 minutes)**

Many businesses using the flat rate scheme might have deregistered from VAT on 31 March 2017, following the introduction of the limited cost trader category and its draconian 16.5% rate. Other businesses might be thinking about deregistering in the future. This presentation considers practical issues with the deregistration process.

Background to deregistration

A business can apply to deregister if taxable sales in the next 12 months are expected to be less than £83,000;

Example 1 - Deregistration and the need to consider future sales

John and Jenny have traded as a partnership for many years, carrying out health and consultancy services for the banking and legal sectors. The partnership is VAT registered and total annual sales are about £120,000 excluding VAT. However, John has decided to work one day a week from 1 April 2017 instead of five, so expected sales in the year ending 31 March 2018 will be £72,000. The partnership can deregister on 31 March 2017 because expected taxable sales in the following 12 months will be less than the deregistration threshold ie £81,000. Historic sales are irrelevant.

The date of deregistration is based on the date when the application has been received by HMRC or a later date ie not on a retrospective basis

Example 2 - Date of deregistration

It is 29 January 2017 and Richard the accountant has just completed the tax return and accounts of his hairdresser client Rachel for the year ending 5 April 2016. He noticed that her turnover had fallen to below the deregistration threshold and it would be in her best interests to deregister because her clients are all members of the public and cannot reclaim input tax. However, the earliest date that Richard can apply for deregistration will be 29 January 2017 ie it cannot be done on a retrospective basis despite the reduced turnover. This is because Rachel is a 'taxable person' (s4, VATA1994) until the request to deregister has been received by HMRC (HMRC Notice 700/11, para 3.4).

The flat rate scheme

Many businesses that will be classed as a limited cost trader on a regular basis will have left the flat rate scheme on 31 March and reverted to normal VAT accounting ie output tax less input tax. However, if annual taxable sales of the business are less than £83,000 and some or all of their clients cannot claim input tax, it is important to evaluate the commercial benefits of deregistration.

To give an example, let us say that a business has some customers who cannot claim input tax, perhaps because they are private individuals or a business making exempt sales.

The business could decide to deregister (if it falls within the deregistration limit) and increase its fees by 10% to these customers who cannot claim input tax ie to share the VAT saving. This will compensate them for the loss of input tax they will incur by leaving the VAT club.

There is a quirk with the FRS rules and deregistration: when a FRS user deregisters, he is deemed to be leaving the scheme on the day before he deregisters (HMRC Notice 733, para 12.4).

Example 3

John and Jenny from the previous example will deregister on 31 May 2017 and raise final VAT invoices before they deregister, covering all work done to date (all sales are standard rated).

It makes sense for them to raise invoices to customers who can claim input tax on 30 30 May but delay raising invoices to those customers who cannot claim input tax on 31 May.

By raising invoices on 30 May rather than 31 May, John and Jenny will account for 12% FRS tax rather than the full 20% output tax. This is because they effectively revert to normal VAT accounting for one day only ie 31 May. They could raise fees by, say, 10% to those customers who cannot claim input tax ie to share the VAT saving by being deregistered.

Supplier invoices

Here is another twist to the tale: it makes sense for John and Jenny to encourage suppliers to invoice them on 31 May is possible because they will be able to claim input tax on these costs because they left the flat rate scheme the day before.

So they are reverting to normal VAT accounting for one day only. A purchase invoice dated 30 May would not be good enough because the business is input tax blocked on that date with the FRS. So overall, a bit of VAT planning has created a 'win win' outcome for both input tax and output tax.

Assets and stock on hand

A common question I have been asked over the years about the FRS relates to paying output tax on stock and assets still owned by a business at the time of deregistration ie 31 March. And this is an important issue because output tax will be due at 20% on these assets because the business left the FRS the day before. As a reminder, here are the basic rules:

Stock and assets are excluded if no input tax was claimed when they were purchased eg a computer bought from a friend or supplier who was not VAT registered.

There is obviously no output tax to pay on zero-rated or exempt items eg most food stock for a restaurant or a motor car where input tax was blocked on purchase (the latter is classed as VAT exempt under VATA1994, Sch 9, Group 14).

If the total market value of the remaining stock and assets is less than £5,000 (ie VAT payable is less than £1,000), then no output tax is payable on the final VAT return.

So the key question is as follows: if I bought a computer for £1,500 plus VAT while I was using the FRS but did not claim input tax on the purchase because it was less than £2,000 including VAT (input tax can be claimed by FRS users on 'capital goods' costing more than this figure – see Notice 733, section 15), can I exclude it from the value of stock and assets liable to output tax when I deregister? The answer is 'yes' because I did not claim input tax on the purchase of the asset.

This makes sense because the reduced record keeping requirements of the FRS would make it difficult to track these items anyway (Notice 700/11, para 7.3).

Post deregistration expenses and bad debts

If a business deregisters and then receives purchase invoices that relate to its period of VAT registration, there is scope to reclaim this VAT by submitting form VAT427 to HMRC with the original purchase invoices. This form also gives scope to claim bad debt relief if some of the debtors on which the business accounted for output tax while it was registered subsequently go bad. (HMRC Notice 700/11, section 9).

Here is a final tip which saved one of my five clients £280. A quirk of the FRS is that even if a scheme user adopts the cash based turnover method and only pays VAT when payment has been made by a customer, there is a cash windfall if a bad debt situation occurs. In VAT terms, bad debt relief can be claimed if an invoice is more than six months overdue for payment and has been written off in the business accounts. Bad debt relief is automatic if a business is not in the FRS and uses the cash accounting scheme but not if it uses the FRS and cash based turnover method.

So it is a good idea to review the collectability of old debtors before deregistering and don't forget that there is scope to claim bad debt relief if other debts go bad after deregistration by using form VAT427 (HMRC Notice 700/11, section 9). See Bad debt windfall.

Bad debt windfall

John and Jenny invoiced a client on 30 June 2016 for £5,000 + VAT. The invoice will never be paid and was written off in their records in March 2017. Even though they have not declared this sale on their VAT returns (they use the cash based turnover method with the FRS), they can claim bad debt relief of £280 on their final return. This is based on the VAT of £1,000 shown on the invoice less the VAT they would have paid with the FRS had the customer paid his dues ie £6,000 x 12% flat rate (HMRC Notice 733, section 14).

Contributed by Neil Warren

Supply of a room for marriage ceremonies

Summary – The supply of a room approved for marriage ceremonies was not an exempt supply of land

In Blue Chip Hotels v HMRC [2017] UKUT 204 (19 May 2017), Blue Chip ran a hotel in Cornwall. One room is approved as premises in which civil marriage ceremonies may take place, while other parts of the hotel are available for wedding receptions and some customers hold both the ceremony and the reception in the hotel.

The First Tier Tribunal had held that the supply of the hire of ceremony room was a separate supply for VAT purposes, even when it was sold as a part of a 'wedding package' which included the wedding ceremony and other services, such catering and the hire of other rooms. That conclusion was not appealed but was the separate supply of the ceremonies room an exempt supply of land?

Decision

The Upper Tribnal concluded that a supply cannot be characterised as a leasing or letting of immovable property within the scope of the exemption if the landlord does more than simply make property available to the tenant for a period, but actively exploits the property to add significant value to the supply.

The supply by Blue Chip was standard rated because it involved the active exploitation of the room by adding significant value. It was the provision of an approved room for a marriage ceremony. That meant that the room had to be a 'seemly and dignified' venue for such proceedings; and Blue Chip had to meet the obligations imposed on it by the Approved Premises Regulations, such as making a responsible person available and supervising the use of the room.

The Upper Tribunal found that the supply of the room approved for marriage ceremonies was not an exempt supply of land (VATA 1994 Sch 9).

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