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CONTENTS

Personal tax

National minimum wage rates (Lecture P1121 – 16.33 minutes)

Draft amending regulations include the new national minimum wage hourly rates that will apply from 1 April 2019:

- Aged over 21 £7.70.
- Aged 18-21 £6.15
- Aged under 18 £4.35
- Apprentice rate £3.90

At the same time the National Living Wage for those 25 and over increases to £8.21 per hour.

Optional remuneration arrangements for cars (Lecture P1122 – 10.26 minutes)

Broadly speaking, the optional remuneration arrangement rules operate by comparing the amount of earnings foregone (i.e. the salary sacrificed) with the amount that would normally be charged to tax by reference to the cash equivalent of the benefit involved. As will be recalled, the employee is now taxed on the higher figure.

Two anomalies have been identified in the FA 2017 legislation which have the effect that like is not being compared with like. Legislation has therefore been brought forward in the Finance Bill to ensure that these omissions are corrected. The corrections have effect for 2019/20 onwards (although not so as to bring the FA 2017 regime into play any sooner than would otherwise be the case – for example, with regard to pre-6 April 2017 arrangements).

Firstly, in the case of company cars, the amount foregone under an optional remuneration arrangement should not include amounts foregone in respect of the employer being prepared to pick up the tab for connected benefits such as insurance, road tax and servicing as well as for the car itself. Unfortunately, the original FA 2017 provisions did not achieve this. The amendment in new S120A(4) ITEPA 2003 makes it clear that the amount foregone in respect of any connected benefits (other than for the provision of a driver or fuel, for which there are separate benefit in kind charges) does not represent a separate salary sacrifice.

Secondly, in calculating the cash equivalent of a company car, the deduction available under S132 ITEPA 2003 for capital contributions by an employee (up to a maximum of £5,000) is made before that cash equivalent is reduced for periods during which the car is unavailable to the employee (see S143 ITEPA 2003). In calculating the amount foregone under optional remuneration arrangements, capital contributions are presently deductible without regard to periods of unavailability. In such circumstances, where a taxable car is provided through an optional remuneration arrangement, the amount deductible for capital contributions is overstated where a car is only available for part of a year. The Finance Bill corrects this by requiring the capital contributions themselves (capped, of course, at £5,000) to be reduced to take account of such periods.

Contributed by Robert Jamieson

Disguised remuneration settlement terms (Lecture P1121 – 16.33 minutes)

The disguised remuneration loan charge is nearly here. HMRC has reminded taxpayers that they can still come forward and provide the required information by 5 April 2019 to avoid having to pay the loan charge.

Taxpayer's who are not already speaking to someone at HMRC, can contact them by emailing:

- cl.resolution@hmrc.gsi.gov.uk for contractor loan schemes
- ca.admin@hmrc.gsi.gov.uk for all other disguised remuneration schemes

HMRC can help taxpayers settle their tax affairs and get out of disguised remuneration avoidance schemes by spreading payments over a number of years as follows:

- Up to 7 years if expected current year taxable income is < £30,000;
- Up to 5 years if expected current year taxable income is less than £50,000;

If income is higher or taxpayers need a longer period to pay, there are no defined minimum or maximum time periods for payment arrangements. In agreeing a payment period, HMRC claim that they will take a realistic look at a taxpayer's income, assets and essential outgoings, alongside what they owe and any other debts and consider how much they are able to pay, and over what period.

HMRC's briefing in this area now emphasises that HMRC will not force those affected by the loan charge to sell their main home and will only consider insolvency where scheme users are either at risk of accruing further debt or actively avoid paying.

HMRC has stated that:

- anyone who registered to settle before 30 September and who sent the required information, should receive a calculation by the end of February 2019
- others who have registered should expect to hear from HMRC within 4 to 6 weeks, although it might take longer if lots of people come forward at the same time;
- nobody will be disadvantaged if they provided the relevant information by 5 April but have not been able to settle due to a delay at HMRC.

www.gov.uk/guidance/disguised-remuneration-settling-your-tax-affairs

www.gov.uk/government/publications/hmrc-issue-briefing-disguised-remuneration-charge-on-loans

Ceasing to be UK resident and its implications (Lecture P1121 – 16.33 minutes)

Summary – The taxpayer ceased to be UK resident in November 2003, making his emoluments to this date and founder's fee taxable. Restrictions being lifted on shares in 2005 and exercising options in 2008, both after he ceased to be UK resident, did not prevent him being liable to tax on these items.

John Charman was born in and employed as a senior executive in the insurance industry in the UK until 2001 when he was unfairly dismissed. He became involved with MMC Capital Inc (MMC), a US company and in April 2001 started to discuss setting up a new insurance entity, Axis Specialty Limited that was to be based in Bermuda.

After a period of fund raising and preliminary work between 19 September and 20 November 2001, the new Bermudan insurance entity proposed by MMC started trading with Mr Charman as its president and chief executive. His employment contract entitled him to an annual salary of no less than $1 million, an annual bonus of no less than 75% of his salary and expenses of no less than $15,000 per month to cover his Bermuda living costs.

From 1 October 2001 Mr Charman was awarded share options in three tranches over three years and on 19 September 2002 he was awarded 50,000 restricted shares in Axis Specialty. In late 2002 or early 2003 he received a founder's fee in respect of the Axis Specialty project from MMC of $2.5 million.

In March 2003 Mr Charman sent HMRC a form P85 "Leaving the United Kingdom" which stated that he had become non-resident in the UK for tax purposes on 27 January 2003. Mr Charman left his family home in Kent for the final time in November 2003 and did not return there.

The restriction on Mr Charman's Axis Specialty shares (which had become Axis Capital shares) was lifted on 19 September 2005. At that time the market value of Mr Charman's Restricted Shares was $11,556,000. On 19 March 2008 Mr Charman exercised and sold some of his Share Options realising a total of $52,869,540.

Mr Charman appealed against assessments raised by HMRC for the tax years 2001/2, 2002/3, 2003/4, 2004/5, 2005/6 and 2007/8. The total amount of tax in dispute was just over £13 million. The assessments relate to employment income, including bonus payments and expenses, the "founders' fee", share options and restricted shares awarded to Mr Charman.

HMRC raised their assessments in March 2010 on the basis that Mr Charman was resident in the UK for the tax year 2001/2 and that he became non-UK tax resident on 27 January 2003. HMRC later argued that Mr Charman did not cease to be resident in the UK for tax purposes until 21 November 2003.

Mr Charman argued that he became non-UK tax resident in October 2001 and therefore none of the amounts on which HMRC seek to charge tax are properly chargeable to UK tax and that HMRC's assessments have taxed some amounts twice. He had a regular pattern of travel during the relevant years of leaving the UK on a Monday afternoon flight to Bermuda and returning to the UK on a Friday morning on an overnight flight from Bermuda. He retained his personal effects (documents, clothing and his car) at a property in the UK until November 2003, when he removed his belongings from what had been his family home, a few days after telling his wife that he wanted a divorce.

Decision

The First Tier Tribunal found that Mr Charman usually spent only three days a week in Bermuda and the remainder of the time either in transit, in the US or in the UK, so he did not work in Bermuda full time. The Tribunal concluded that Mr Charman was not working “full time abroad” in any of 2001/2, 2002/3 or 2003/4

The Tribunal concluded that he did not decide to make a decisive break with the UK until January 2003 but took no physical action to cut his ties with the UK until 21 November 2003, when he informed his wife that their marriage was over and removed his belongings from the family home, never to return. He signed a new employment contract with Axis in Bermuda on 15 December 2003 that did not include provision for covering the costs of him commuting back to the UK. He was non-UK resident from this date with the following implications:

- 2001/02: Mr Charman was UK resident and taxable on his salary and expenses;

- 2002/03: Mr Charman was UK resident and taxable on his salary, expenses and bonus (for 2002, which was paid on 14 March 2003) and the Founder’s Fee;

- 2003/04: There was no valid assessment for this year. HMRC’s discovery assessment on part of Mr Charman’s bonus for 2003 (which was paid on 12 February 2004) was not valid. The Tribunal found that HMRC “discovered” by 24 November 2006 that Mr Charman’s bonus was potentially liable to tax during the 2003/4 tax year as this was when the discovery assessment was issued in respect of 2001/02. Any later action by HMRC could not be a “new” discovery of a potential under assessment, but only confirmation of the “discovery” made by HMRC. The authorities are agreed that it is not possible for the same “discovery” to be made twice. The length of time between the “discovery” by HMRC and the issuing of the assessment was too long;

- 2004/05: Mr Charman was not UK tax resident for any part of this year. Any assessment on Mr Charman’s bonus for 2003 in this year is not valid; that bonus was paid on 14 February 2004;

- 2005/06: Mr Charman was taxable on the removal of the restriction in September 2005 on his Restricted Shares during this tax year. The fact that the restriction was lifted at a time when Mr Charman was no longer UK resident did not prevent a UK tax charge arising. A tax charge arises under s 427 ITEPA 2003 for the year in which the restrictions were lifted, because Mr Charman was a UK resident at the time when he obtained his beneficial interest in the shares (December 2002);

- 2007/08: Mr Charman is taxable on 2/3rds only of the gain on the Share Options which were exercised and sold in this year. Mr Charman was UK tax resident when he was granted the first two tranches of share options and so a tax charge arises in respect of any gain on these options at the time when they were exercised in 2008, not at the time when they were granted as assumed by HMRC. It was not possible to ascertain which of the options granted to Mr Charman were exercised on which date, hence any gain should be split rateably between the options, assuming that 1/3 of the gain arose in respect of each of the three option tranches. On this basis, HMRC’s discovery assessment for the 2007/8 tax year should be amended to charge to tax only 2/3rds of the gain on the exercise of the Share Options.

John Charman v HMRC (TC06899)

Reporting non-taxable death benefits

HMRC have received some questions from pension scheme administrators about using a starting date for reporting death benefits that are entirely non-taxable. As a result, they have revisited the Real Time Information Technical specifications, 2018 to 2019 CWG2 and Pension Schemes Newsletters and found that the guidance they gave in the newsletter was wrong.

Scheme administrators who followed their guidance and tried to report a starting date for these payments will have received an error message. This was because when reporting death benefits that are entirely non-taxable, the starting date field should be blank when the scheme administrator submits their FPS. For these payments the annual amount should be zero. This applies to both lump sum death benefits and regular death benefit pension payments that are entirely non-taxable.

Where scheme administrators have received an error message when reporting non-taxable death benefits HMRC ask that the scheme administrator tries to report this payment again but this time leave the starting date field blank at the point of submission.

www.gov.uk/government/publications/pension-schemes-newsletter-106-january-2019

Capital Taxes

Failure of scheme to generate capital losses (Lecture P1121 – 16.33 minutes)

Summary - A scheme to generate capital losses failed under the value shifting rules but a loan waiver was not subject to income tax.

Mr Kerrison was one of a number of participants in a scheme known as Excalibur designed to generate capital losses. Under the scheme, Broadgate Trading Ltd, a new company, was incorporated in the Isle of Man and it acquired a small UK retail trade called the Flower Emporium. Mr Kerrison subscribed for 20 B shares at a cost of £20.

Two weeks later on 9th June 2006 he sold his shares to Braye Finance Ltd, an unconnected company for £24.40 (£1.22 per share) and at the same time, under a second agreement, granted Braye Finance Ltd a put option to sell the shares back to him within 30 days at their 'fair value' plus 9.1%.

On 20 June 2006, Braye Finance Ltd exercised the put option and sold his 20 B ordinary shares back to Mr Kerrison for a total consideration of approximately £1.1m. He borrowed approximately £1m from Schroders and used the proceeds of that loan and £100,000 of his own money to fund the purchase under the put option.

On 30 June 2006, Broadgate Trading Ltd established a British Virgin Islands subsidiary, Broadgate Group Holdings Limited. This company advanced an interest-free loan to Mr Kerrison in order for him to repay his borrowing from Schroders. That loan was written off in November 2006.

On 3 December 2006, Mr Kerison donated his shares in Broadgate Trading Ltd to charity.

It was common ground that the scheme had no commercial purpose and that it was solely designed to create a capital loss which could then be set off against Mr Kerrison's income for income tax purposes under s.574 ICTA 1988.

The First Tier Tribunal explained how the scheme was intended to work:

> "The intended tax analysis was that the sale and repurchase from Braye would fall within s 106A Taxation of Chargeable Gains Act 1992 ("TCGA"), such that the shares acquired from Braye would be identified with the shares disposed of to Braye for capital gains tax ("CGT") purposes, giving rise to a substantial capital loss on the basis that the appellant had acquired shares for a significant sum and sold them for a nominal amount. The appellant would be entitled to claim relief against income tax in respect of the loss under s 574 Income and Corporation Taxes Act 1988 ("ICTA"). The disposal to charity was a "no gain no loss" disposal (s 257 TCGA)."

HMRC argued that the scheme was caught by the value shifting rules in s30 TCGA 1992 that provides as follows:

> "(1) This section has effect as respects the disposal of an asset if a scheme has been effected or arrangements have been made (whether before or after the disposal) whereby-
>
> (a) the value of the asset ... has been materially reduced, and
>
> (b) a tax-free benefit has been or will be conferred-
>
> (i) on the person making the disposal or a person with whom he is connected"

The second issue was whether the loan waiver was chargeable to income tax under s687(1) ITTOIA 2005 that states:

> " Income tax is charged under this Chapter on income from any source that is not charged to income tax under or as a result of any other provision of this Act or any other Act."

Decision

The aim of the scheme was to create an increase in value of the shares via the disposal to Braye Finance Ltd close to par with the subsequent reacquisition within 30 days at a greatly increased price. Agreeing with the First Tier Tribunal, the Upper Tribunal found that s30 TCGA 1992 could apply to an increase in the value contemplated by the parties as 30(9) states that:

> "In relation to a case in which the disposal of an asset precedes its acquisition the references in subsections (1)(a) …. above to a reduction shall be read as including a reference to an increase."

This latter acquisition was therefore caught by s 30(9).

On the second issue, once again agreeing with the First Tier Tribunal, the Upper Tribunal found that the loan write off, or waiver, was not chargeable under s687 ITTOIA 2005 as it was an entirely voluntary one –off transaction that was clearly capital. Broadgate Group Holdings Limited was under no obligation to grant the write off. The Tribunal saw no genuine analogy between the loan write off and a dividend or other income distribution. The loan write off was not made in respect of Mr Kerrison's shareholding in Broadgate Trading Ltd but rather to collapse the scheme in which he had participated.

Adrian Kerrison v HMRC [2019] UKUT 0008(TCC)

Entrepreneurs’ relief – disposal of trust business assets (Lecture P1123 – 13.58 minutes)

In order for entrepreneurs’ relief to be available for a disposal of business assets by trustees, the following conditions must be met (see S169J TCGA 1992):

- the trust must have an interest in possession (entrepreneurs’ relief is not available for disposals by discretionary trustees);
- the disposal must be a disposal of shares in a qualifying company or of assets used for the purposes of a business; and
- a life tenant of the trust must meet the normal requirements for entrepreneurs’ relief (where shares are concerned) in that, for the qualifying period, the company must have been his personal company and he must have been an officer or employee – in the case of assets used for a business, the business must have been carried on by the life tenant.

For several years, it has been thought that there was a loophole in S169J TCGA 1992, given that there was no requirement in that part of the CGT code for the life tenant to have been a qualifying beneficiary for at least a 12-month period prior to the trust disposal. If so, this opens up the possibility that a discretionary trust can convert to an interest in possession arrangement and can then ‘parachute in’ a suitable beneficiary for a short period during which the shares or other business assets are sold. If the life interest is subsequently revoked, this would not, it was argued, cause the trustees’ 10% claim to fail.

HMRC have recently indicated that, in their opinion, this planning ploy does not work. This follows, they say, from the words of the statute that is written in terms of a qualifying beneficiary, and not simply an individual. Interestingly, HMRC have previously given advice that contradicted this position. However, they are now saying that the technical adviser who provided that guidance was wrong. A senior HMRC official confirmed that he would be asking his technical colleagues to withdraw the advice and clarify the situation. However, if and when they do that, it will surely be necessary for HMRC to specify an effective date from which the corrected interpretation would apply to trust disposals.

Another relevant aspect is that a Government Minister (the Financial Secretary to the Treasury) appeared to give the idea a green light during the Committee Stage debates on the Finance Bill which introduced entrepreneurs’ relief – note the Rt Hon Jane Kennedy’s comments on 13 May 2008.

The speaker cannot see that HMRC’s revised stance represents a correct analysis of the statutory wording in its present form.

Contributed by Robert Jamieson

Emigration Charges For UK Trusts (Lecture P1124 – 10.29 minutes)

Introduction

Even practitioners with only a passing interest in the murky world of trusts should try to be conversant with the rules on emigration charges as these pesky rules can creep-up unexpectedly and give a nasty bite.

This is because it is easy to export a trust from the UK without realising that this is happening.

For example…. Assume your client and his wife are the co-Trustees of a family trust set up by your client's parents for the benefit of their grandchildren. The trust is an everyday discretionary trust used to pay school fees and to (hopefully) give the grandchildren a foot in the housing market when the time comes to appoint the capital. The trust fund is invested in a UK residential property (producing rental income) and a portfolio of listed stocks and shares producing income and dividends. Nothing too outrageous or complicated.

Your client calls you one day to say that he has been offered a job abroad and he and the family are off to sample the delights of a warmer climate and a different culture for a few years. With this in mind, can he have some advice on residence issues please – ie, how he pays UK tax on his income and gains while he is abroad.

No problem you tell him. There is no need to worry about the trust here because he and his wife will continue to be the Trustees, so it's business as usual….

Err…no, it isn't.

The trust will currently be UK resident because its Trustees live in the UK. The trust is accordingly taxable on its worldwide income and gains. [Even in cases where the Trustees are of mixed UK and non-UK residence, if the settlor was either domiciled or resident in the UK at the time when he created the trust, the trust is UK resident.]

However, soon we will have a trust where all of the Trustees (all 2 of them in this case) are non-UK resident so, hey presto, we now have an offshore trust. We never intended to have one and there are no dark arts at work here. This is just an accidental consequence of the individual Trustees going about their everyday lives.

We now have 2 choices. We can recommend a change of Trustees so that new UK resident Trustees are appointed in place of the old ones and the trust consequently remains UK resident. Ok, this works and it avoids us having to Google "How Do Offshore Trusts Pay Tax?". But Mum and Dad are the logical Trustees of a trust for their own children and they continue to be best placed to decide what is in their kids' best interests. Plus we perhaps ought not to give advice based on rules we are comfortable with.

Option 2 is to deal with it.

Offshore Trusts – general rules

I don't want to turn this into an outpouring of complex rules on offshore trusts, so we'll keep this next bit simple.

A non-UK resident trust is taxed on its UK income only. SA returns will still be required to report UK income. If the trust has rental income, the Trustees will become a Non-Resident Landlord so an application to receive rents gross (form NRL1) should be considered.

Foreign income is no longer subject to UK tax. [Local tax advice should always be sought.]

There are no split year rules, so the trust will be UK resident for the whole of the tax year it which it emigrates. Non-residence effectively kicks-in from the following 6 April.

A very important but often overlooked point is that if the non-resident trust has no UK resident beneficiaries, the trust benefits from the same UK liability restriction which applies to non-resident individuals. This is very common for family trusts where the everyone leaves the UK. In this case any 'disregarded income' – broadly meaning UK investment income such as interest and dividends – will not be charged to UK tax. The effect of the restriction is that the Trustees' UK income tax liability while the trust is non-UK resident will often be restricted to tax on any UK rental profits.

Where a non-UK resident trust has at least one UK resident beneficiary, all UK trust income is fully taxable.

Non-resident trusts are not generally chargeable to CGT. There are exceptions for UK assets used in a trade (chargeable under S.10) and for UK residential property (which remains chargeable under the NRCGT rules).

There is therefore clearly a UK tax advantage to be obtained by moving the trust abroad (typically to a tax haven where local tax is not an issue).

To prevent perceived tax avoidance by UK individuals who export their UK trusts and thereby take income and gains outside the scope of UK tax, we have the "emigration charge". [This is also called the "exit charge" although I use the former to avoid getting mixed-up with IHT exit charges on relevant property trusts which are a different animal altogether.]

The Section 80 TCGA 1992 emigration charge

A CGT emigration charge applies when the Trustees of a settlement cease to be resident in the UK.

This will happen when either:

(a) There is a conscious decision to export the trust (for example to deliberately take advantage of income tax or CGT breaks available for non-resident trusts, particular where the settlor is non-UK domiciled). In this case the UK Board of Trustees will step-aside and be replaced by a non-UK Board, often being professional Trustees situated in the Channel Islands, Isle of Man or a more exotic tax-haven; or

(b) The trust changes its residence status "by accident" because of the Trustees themselves becoming non-UK resident and thereby taking the trust with them.

In either case, Section 80 deems the trust assets to have been disposed of and immediately reacquired for market value, thereby triggering capital gains on the trust's chargeable assets (typically shares, property and the occasional piece of artwork). The Trustees are required to pay the CGT by the normal due date even though they have sold no assets and may have no proceeds to fund the tax payment. There is no deferral mechanism and no procedure for postponing the tax or paying by instalments. To this end, Section 80 is something of a blunt instrument.

The only crumb of comfort comes in the form of S.80A that allows Trustees to elect to exclude UK residential property from the emigration charge. The Trustees would then pay tax on the whole gain (not just the post-April 2015 element) when the property is subsequently sold. The effect of this election is simply to defer payment of tax on the gain accruing before emigration until the property is sold.

S.80A only applies to UK residential property. Deemed gains on other assets will be chargeable in the tax year of emigration with the CGT payable by the following 31 January.

Mr Panayi

This principle was challenged in the 2017 case of Mr Panayi and his family trusts.

Mr Panayi, a Cypriot national, was the settlor of four family trusts. The trusts were initially UK resident. Mr Panayi had the power to appoint and remove Trustees which he did in August 2004 by appointing Trustees all of whom were resident in Cyprus.

The 2004/05 trust return did not include details of the Section 80 emigration charge (although HMRC had been notified of the change in Trustees). In 2010 HMRC raised an assessment to collect CGT due under Section 80 which should have been paid by 31 January 2006.

The Panayi Trustees appealed the assessment and brought the case to the First Tier Tribunal on the grounds that the Section 80 emigration change was incompatible with fundamental freedoms of movement under EU law. The FTT duly referred a number of questions to the Court of Justice of the European Union (CJEU).

The detailed arguments from this point are for lawyers and I have no inclination to step into that particular pool of quicksand. The salient points to come out of the CJEU's deliberations were that:

- EU Treaty freedoms do apply to trusts. This includes the freedom of establishment (meaning that Trusts can be established in any member state without discrimination);

- Where a trust transfers its place of management to another member state, a more appropriate and less harmful approach would be to allow the Trustees to choose between immediate payment of the tax due or deferred payment of that tax together with interest; and

- Section 80 provides only for the immediate payment of the tax charged. Section 80 accordingly goes beyond what is necessary to achieve the objective of preserving the UK's taxing powers and constitutes an unjustified restriction on the trusts' freedom of establishment.

Hear hear.

The UK response

Changes are proposed by Clause 22 and Schedule 7 of the Finance (No. 3) Bill 2018. These changes are intended to take effect for trusts ceasing to be UK resident and thereafter becoming resident in an EU or EEA member state from 6 April 2019.

Trusts in this position who are liable for emigration charges under Section 80 can claim to defer payment by entering a CGT "exit charge payment plan" (ECPP).

The Trustees will need to show that when they ceased to be UK resident they had a right to freedom of establishment and the assets subject to the charge have been, and will be, used for an economically significant economic activity.

[Note here that a Trust is established to hold and manage the trust assets for the benefit of the beneficiaries, so the Trustees management of the fund will normally be an economic activity.]

The ECPP allows for the tax to be paid in six equal instalments with the first payment being due on the normal 31 January due date. Interest will accrue on the outstanding balance and will be added to each instalment. The taxpayer is free to pay any outstanding balance, with interest, before the end of the ECPP period. Security may need to be provided by the Trustees where HMRC considers that there would be a serious risk to the collection of tax.

Trusts being exported to non-EU / EA states remain unaffected. For the avoidance of doubt, even though the Channel Islands and the Isle of Man have certain special free trade relationships with the EU, neither are actually in either the EU or EEA.

Extending this principle to other CGT charges on deemed disposals…?

There have been calls (by the CIOT and other bodies) for this idea to be extended to other CGT charges such as the charge which arises under Section 168 TCGA. Section 168 creates a deemed disposal by reason of the emigration of the donee within 6 tax years of receiving an asset on which the gain was held-over.

Under Section 168 as it stands, the deferred gain crystallises in the tax year in which the donee becomes non-UK resent. To be consistent with the proposed changes, representations have been made for this tax to be payable in instalments where the donee is leaving the UK to become resident in another EU member state. This hasn't been accepted but it seems a very sensible suggestion so watch this space.

Section 25 TCGA 1992

The changes also apply to non-UK resident individuals who are nationals of an EU / EEA state and who are trading through a UK branch or agency.

Under Section 25, if either an asset ceases to be used in that UK trade or if a trading asset is removed from the UK, it is treated as disposed of and immediately reacquired at market value, thereby triggering a UK chargeable gain.

From April 2019, EU/ EEA nationals in this position can also claim to defer payment using the new exit charge payment plan.

If a taxpayer has made a claim to use an ECPP and he later becomes resident in a country that is not part of the EEA, the full outstanding balance (with accrued interest) is payable on the date the next instalment would have been due.

What about Brexit?

This is rhetorical, and I mention it only because I knew you were thinking it. After all, we can't go 5 minutes without hearing the flaming word.

As with all things Brexit, nobody knows. I guess we will have to wait and see whether this legislation (along with a stack of other provisions) are removed from our statute books once (or indeed if, no political comment intended…?) we finally fly the EU nest. Or perhaps we should vote on it….

Business relief - A significant victory for the taxpayer (Lecture P1125 – 15.24 minutes)

In Vigne v HMRC (2017), the First-Tier Tribunal considered the availability of 100% business relief for an unincorporated livery stable enterprise based in Buckinghamshire owned by V. Following V's death, the tax authorities sought to disallow this relief in connection with a business that needed 30 acres of land in order to be viable.

In HMRC's view, the facts of the Vigne case suggested that:

- the landowner was letting the land for the use of others;
- there was insufficient activity and expenditure of a business nature; and
- because the business was only modestly profitable, this could not indicate anything other than an investment in land.

However, as the First-Tier Tribunal pointed out, the statute simply requires that a business exists and that the business must not consist wholly or mainly of the making or holding of investments. It was clear in this instance that a genuine business was being carried on by V and that valuable services (eg. the provision of worming products, including administering them to the horses when and where necessary, and the undertaking of a daily health check on each horse) were being provided to the users of the livery which prevented the business from being one of holding investments.

The upshot was that the First-Tier Tribunal rejected HMRC's arguments, saying that no properly informed observer could have concluded that the business was one of holding investments. Business relief was therefore available. The two judges described HMRC's stance as an 'artificial' analysis. It should be remembered that, in other cases where land has been involved, HMRC have been keen to emphasise the following passage from the Upper Tribunal's decision in HMRC v Pawson (2013):

'The critical question, however, is whether these services were of such a nature and extent that they prevented the business from being mainly one of holding (the holiday property) as an investment.'

In Vigne v HMRC (2017), the First-Tier Tribunal judges asserted that this was the wrong test. It begins, they said, with the preordained idea that the business is wholly or mainly one of making or holding investments and then asks whether there are factors which point to the contrary. The proper starting-point, it was explained, is to make no assumption one way or the other but to establish the facts and then to determine whether the business is wholly or mainly one of making or holding investments. On this basis, V's business qualified for the IHT relief.

It is certainly unusual to find judges in a lower court or tribunal being quite so critical of their superiors!

Unsurprisingly, HMRC appealed and, on 13 July 2018, their arguments were heard by the Upper Tribunal (HMRC v Vigne (2018)).

Having summarised the position, the two Upper Tribunal judges said:

> 'None of the relevant primary facts found by the First-Tier Tribunal are disputed by the appellant. It is therefore clear that the Upper Tribunal can only overturn the First-Tier Tribunal's decision if we are satisfied that the First-Tier Tribunal applied the wrong legal test or if it plainly misapplied the correct legal test to the facts which it found.'

The judges confirmed that, in their opinion, the First-Tier Tribunal had used the correct test.

Where the First-Tier Tribunal appeared to be criticising the words of Henderson J (as he then was) in the Pawson case ('I take as my starting-point the proposition that the owning and holding of land in order to obtain an income from it is generally to be characterised as an investment activity'), the Upper Tribunal felt that the lower court was merely expressing the view that the argument put out by Henderson J as being an appropriate 'starting-point' for a managed holiday letting business was not necessarily also appropriate for a livery operation of the type under consideration here. The First-Tier Tribunal did not consider that V had owned the land in Buckinghamshire 'in order to obtain an income from it' and so Henderson J's presumption of investment activity was inapplicable in the present case. This had been a central tenet of HMRC's appeal.

The Upper Tribunal concluded:

> 'We are satisfied that, when the First-Tier Tribunal decision is read as a whole, the First-Tier Tribunal applied the correct legal test.'

The question which then arises is whether, given the facts of the case as the First-Tier Tribunal found them, its judgment that V's business was not 'wholly or mainly . . . making or holding investments' was one which it was entitled to reach. In this context, it is important to point out that the function of the Upper Tribunal is not to reach its own conclusion on this matter but to decide whether, on the evidence before it, the First-Tier Tribunal was entitled to make the decision which it did. In this regard, the judges said:

> 'It is clear that this Tribunal should be "slow to interfere" and should not reverse the First-Tier Tribunal's decision, unless it has "erred in principle".'

Having considered HMRC's criticisms of the First-Tier Tribunal's decision (which were largely based on the presumption that the deceased's business was essentially one which, involving the exploitation of land, fell at the 'investment' end of the spectrum – a presumption which the First-Tier Tribunal declined to make), the judges went on:

> 'We do not consider there is enough in these criticisms to justify any interference with the conclusion which the First-Tier Tribunal reached. There is no clear bright line between businesses which qualify for the relief and those that do not. We are satisfied that . . . the conclusion which (the First-Tier Tribunal) reached was one which it was entitled to reach on the basis of the evidence before it. It is irrelevant that we, or another panel of the First-Tier Tribunal, might have reached a different conclusion.'

HMRC's appeal was dismissed.

Contributed by Robert Jamieson

Rescinded contract and refund of SDLT

Summary – Stamp Duty land tax paid on substantial performance of a contract that was subsequently rescinded was repayable even though the 12-month deadline for submitting an amended return had passed.

On 5 February 2014 Mr and Mrs Smallman entered into a contract for the purchase of a property for £450,000. On the same date a deposit of £112,500 was paid with completion expected to take place on 1 May 2015.

As Mr and Mrs Smallman were already tenants at the property, they were already in possession and the contract was deemed to have been substantially performed on the date of the contract. A SDLT Return was duly submitted on 5 February 2014 with SDLT of £13,500 paid (3% of the agreed purchase price of £450,000).

However, in July 2014 Mr and Mrs Smallman started to encounter serious difficulties with their neighbours and six months later in January 2015, Mr and Mrs Smallman decided to abandon the purchase. The property was eventually sold to another couple for £417,500. The original contract to purchase the property was rescinded and a new contract was completed on 22 May 2015. Under the terms of the new agreement, Mr and Mrs Smallman were obliged to reimburse the vendors for the difference between the consideration they had agreed and the new sale price so £32,500.

Following completion, Mr and Mrs Smallman thought it unfair that they had paid SDLT of £13,500 when the contract had not been completed. This was not based on any knowledge of SDLT but was simply a common sense reaction to what had happened. On 25 June 2015, their solicitors submitted an amended SDLT Return on their behalf claiming a repayment of SDLT under s44(9) FA 2003.

HMRC said the claim was out of time. HMRC invited them to claim under Sch 10 para 34 but said that they would challenge. This happened and the taxpayers appealed.

Decision

The First-tier Tribunal agreed with HMRC that the s 44(9) claim was out of time. To be valid it would have to be made within 12 months of the filing date of the return:

- The contract was deemed to have been substantially performed on 5 February 2014;
- An SDLT return must be filed within 30 days of this date so before 7 March 2014;
- To be valid, an amended return would must have been made before 7 March 2015;
- Filing the amended return on 25 June 2015 was too late.

Under Para 34 Sch 10 FA 2003 there is an extended time limit where “a person has paid an amount by way of tax but believes that the tax was not due.”

The Tribunal said that HMRC were not obliged to give such relief in all cases. Para 34A sets out a number of circumstances in which no repayment is to be made, including para 34A(4) which states:

> "(4) Case C is where the claimant–
>
> (a) could have sought relief by taking such steps within a period that has now expired, and
>
> (b) knew, or ought reasonably to have known, before the end of that period that such relief was available."

The First Tier Tribunal said that Mr and Mrs Smallman had concluded, as a matter of common sense, that they should try to recover the stamp duty land tax. This is not the same as knowing that relief was available by filing an amended return but missing the appropriate deadline. Sch 10 para 34 allowed them to obtain a refund.

The appeal was allowed.

Derek and Susan Smallman v HMRC (TC06826)

Administration

Failure to notify chargeability – deliberate or careless (Lecture P1121 – 16.33 minutes)

Summary – HMRC's failure to inform the taxpayer that he had been removed from self-assessment provided the taxpayer with a reasonable excuse for his failure to notify liability.

The taxpayer was a self-employed singer/songwriter and musician. In 2008/09, he moved to the US returning to the UK in 2011/12. He was touring abroad for much of the time and so failed to send relevant tax information to his accountant. Eventually, in April 2014, his accountant tried to file Mr Redman's 2011/12 and 2012/13 returns but was unable to do so because HMRC had removed Mr Redman from the self-assessment system on 18 December 2011 for years after 2010/11. His accountant wrote to HMRC stating:

> "Only when recently coming to submit Mr Redman's late 2011-12 and 2012-13 SA tax returns did we realise that HM Revenue & Customs appeared to have removed our client from Self-Assessment after 2010- 11, not issuing tax return notices for those two later years.
>
> This left Mr Redman not with late tax returns but with effective failure to notify liability under s 7 TMA 1970 for the affected years. We understand from you that your records show that the removal from SA occurred on 18 December 2011. We have no evidence of this ever having been notified to our client or us."

The issue to be resolved was whether Mr Redman was liable to penalties for deliberate, (or alternatively careless), failure to notify chargeability resulting in penalties of close to £100,000. Mr Redman argued that he had a reasonable excuse for failing to notify liability.

Decision

The Tribunal said that a taxpayer can only be 'liable to a penalty for a "deliberate" failure to notify liability, if he knew about that obligation and decided not to comply, or (possibly), if he intentionally chose not to find out the true position, even though he knew that he should do so.'

The Tribunal found as a fact that 'Mr Redman and his accountant were unaware that he had been taken out of the self-assessment system, so he did not know about the obligation, and he did not intentionally shut his eyes to the true position. It was therefore not possible for Mr Redman to be liable to a penalty for deliberate failure to notify.'

The Tribunal concluded that Mr Redman had not been careless as he had been in the self-assessment system since 1996. He knew he had missed the filing deadlines, but he had no reason to believe that he had an obligation to notify chargeability. The accountant contacted HMRC promptly on realising that he could not file Mr Redman's returns, to notify liability so 'without unreasonable delay'. The Tribunal concluded that Mr Redman has a reasonable excuse for his failure to notify.

The taxpayer's appeal was allowed.

Matthew Redman v HMRC (TC06857)

Special circumstances for late CIS returns

Summary – Looking at the big picture, this justified a reduction in the amount of the penalties as there was no opportunity to become aware of their mistake before incurring multiple penalties as a result of multiple defaults.

Advanced Scaffolding (Bristol) Ltd provides scaffolding for construction projects. Miss Cox, the sole director, does not get involved in the actual work carried out by the company but takes responsibility for all relevant paperwork including any returns required under the CIS.

During a PAYE and CIS compliance check carried out in November 2015, HMRC discovered that the company had failed to appreciate that certain payments to Pocock Building Services Limited and CS Scaffolding Limited should have been reported under the CIS.

HMRC identified 28 months when returns should have been submitted, although, for the vast majority that related to Pocock Building Services Limited, no tax was due as the company was entitled to pay the recipient without deduction of tax. The total amount of tax that should have been deducted from the payments to CS Scaffolding Limited was in the region of £2,500.

HMRC charged penalties totalling £22,600 in respect of these failures. The penalties were charged under s 98A TMA1970 for defaults in 2009 and 2010 while penalties for 2012-2015 have been charged under schedule 55 FA 2009 which replaced the previous regime in 2011.

Miss Cox had always understood that Pocock and CS Scaffolding Limited had supplied only materials. She did not appreciate that they had also supplied labour. She had therefore always allocated their invoices to the “purchases” section of the appellant’s accounts and not the section for “sub-contracted labour”. On this basis, she also did not complete CIS returns in respect of these payments as she thought that they fell outside the CIS as being the supply of materials rather than a supply of labour.

The company appealed against all of these penalties on the basis that it had a reasonable excuse for the failures and/or that the amount of the penalties was disproportionate in the circumstances. Interestingly, at the hearing, the Tribunal judge raised a question as to whether the fact that the defaults related to multiple returns could constitute a special circumstance justifying a reduction in the amount of the penalties in the light of the decision of the First-Tier Tribunal in Welland v HMRC. In this case, penalties were due under schedule 55 for the late filing of non-resident capital gains tax returns. Under that regime, a taxpayer must submit a tax return within 30 days after the sale of a property. Mr Welland was unaware of this requirement and reported the three gains in his self-assessment return instead. He was charged three separate penalties. The parties had not come prepared to make submissions on this point and so they were requested to make written submissions that were taken into account.

Decision

The Tribunal concluded that Miss Cox’s argument that she did not appreciate that labour was being provided as well as materials was not a reasonable excuse. It was clear from the invoices that labour was being provided.

Even if the problem was that Miss Cox did not realise that the work involved in fitting the netting/sheeting was enough to bring the CIS into play, whilst this may be a mistake as to the law, it was not one that, in the circumstances of this case, provided a reasonable excuse. It was not reasonable for her to assume that the contracts remained outside the CIS simply because they also involved a supply of materials.

The First-Tier Tribunal judge stated that they could not consider issues such as proportionality or unfairness. Instead, the only remedy for the taxpayer in this situation is to bring an action for judicial review.

The penalties charged under s98A TMA totalling £3,000 were upheld as there is no other basis for the appeal against those penalties. However, as far as the penalties charged under schedule 55 were concerned, the Tribunal considered whether there were any special circumstances that would justify a reduction in the amount of the penalties.

The Tribunal concluded that the correct approach was to consider all of the facts of the case and then to decide whether, taken as a whole, those facts constituted special circumstances which make it right to reduce the penalty in question. They took into account the fact that multiple defaults led to multiple penalties deriving from a single genuine mistake, the company had a good compliance record and that the tax deductions that should have been made were minimal. The overall picture made the circumstances as a whole sufficiently special to justify a reduction in the amount of the penalties. The company did not have the opportunity to become aware of its mistake before incurring multiple penalties as a result of multiple defaults.

Although the company did not fall within paragraph 13 of Schedule 55 (that limits the amount of penalties for failure to file CIS returns where a taxpayer has not previously filed a return), the Tribunal concluded that the circumstances were such that this provided a good guide as to the amount of the appropriate reduction of the penalties in this case. The schedule 55 penalties were reduced to zero.

£3,000 penalties should be charged under s98A TMA 1970.

Advanced Scaffolding (Bristol) Ltd v HMRC (TC06877)

Change of address notified (Lecture P1121 – 16.33 minutes)

Summary – The taxpayer had a reasonable excuse for the late filing of his returns claiming that he had not received documents, including notices to file a self-assessment return, from HMRC.

Until August 2013, Oliver Wincott had been self-employed and had successfully filed self-assessment tax returns as required by HMRC.

On becoming an employee in 2013/14, he completed a P46. Later, in February 2014, he moved house, informing his employer of his new address. With his tax collected under PAYE, having notified his address on his P46, and subsequently receiving documents such as his P60s at his new address, he believed that HMRC knew of this address. However, HMRC had sent notices to file to his previous address.

He moved again in July 2016 and, because of a tax code query, told HMRC his new address in September 2017 and at this time learned of his late returns and penalties. He filed the reruns in November 2017. He appealed, claiming that he had not received documents, including notices to file self-assessment returns, from HMRC.

Decision

Having completed a P46 when employment started, informing his employer of his address, the First Tier Tribunal stated that an employee could well assume that HMRC's records had been updated from relevant information provided by their employer to HMRC.

With tax collected under PAYE and believing that he did not need to file a self-assessment return Oliver Wincott had good reason to believe that HMRC knew his address as he was receiving his P60s at this address. Although HMRC had not received any change of address details from him, they should have received them from his employer.

The Tribunal concluded that Oliver Wincott had a reasonable excuse for filing both his 2013/14 and 2014/15 returns late.

The taxpayer's appeal was allowed.

Oliver Ralph Wincott v HMRC (TC06919)

Deadlines

1 March 2019

- Corporation tax due for periods ended 31 May 2018 for SME companies.

7 March 2019

- VAT return and payment due date for 31 January 2019 quarter (electronic payment).

13 March 2019

- Spring Statement

14 March 2019

- EC sales list deadline for monthly paper return.

21 March 2019

- File online monthly EC sales list;
- Submit supplementary intrastat declarations for February 2018.

22 March 2019

- PAYE, NI and student loan liabilities should have cleared HMRC's bank account.

31 March 2019

- Private company 30 June 2018 year end accounts to Companies House ;
- Public limited company 30 September 2018 year end as well;
- CTSA returns for companies with periods ended 31 March 2018 submitted;
- End of chargeable period for annual tax on enveloped dwellings (ATED).

HMRC News

Spotlight 47: Avoiding an IT charge when a company is wound up

HMRC is aware of schemes that claim to avoid the Income Tax charge for shareholders when winding up a company by adopting schemes that change the way they take value out of their companies.

Until 6 April 2016, individual(s) who intended to continue carrying on their company's activities would wind up the company and receive the company's undistributed profits. These profits would be classed as 'capital distributions', rather than a dividend or other income distribution. This meant the individual paid tax at a lower rate. They would then carry on the same or similar activity, often using a newly-formed company. This practice is known as 'phoenixism'.

In 2015 the government announced the new Targeted Anti-avoidance Rule (TAAR) legislation to end this type of phoenixism and stop individuals from gaining a tax advantage by winding up companies [Finance Act 2016, ss 33-35]. However, some scheme promoters claim to have come up with schemes that avoid the Income Tax charge and get around the TAAR legislation. They claim that by making an artificial modification of the arrangements, and selling the company to a third party, the TAAR will not apply.

HMRC's view

These schemes do not work because in many cases, the actual outcome is that the individual is receiving distributions in a winding up and as the individual carries on trading using a different vehicle these schemes are within the scope and purpose of the TAAR legislation.

If it is claimed that the phoenixism TAAR does not cover the arrangements, HMRC will consider whether the General Anti-abuse Rule (GAAR) applies to these schemes.

www.gov.uk/guidance/attempts-to-avoid-an-income-tax-charge-when-a-company-is-wound-up-spotlight-47

Spotlight 48: Contractor Loans Settlements And Obtaining A Deed Of Release

As you know, taxpayers using or have used disguised remuneration tax avoidance arrangements, should contact HMRC to settle their tax affairs before the loan charge comes into effect on 5 April 2019.

HMRC is aware that wording about Inheritance Tax (IHT) in their settlement pack is being misunderstood, especially where contractor loans schemes have been used. Scheme users are being told that HMRC will demand a deed of release or exclusion, or both, before agreeing a settlement and, in some cases, are being charged for these deeds.

HMRC has confirmed that:

- they will not demand a deed of release or exclusion before agreeing a settlement;
- any payment made will not reduce the amount of earnings or income to be included in the settlement;
- if a settlement is not reached and the loan charge becomes payable, they may accept such payment as reducing the outstanding loan balance if it:
  - represents a genuine repayment of the loan;
  - is paid in cash.

Any flat fee paid is unlikely to be deductible in reaching the settlement amount due.

www.gov.uk/guidance/disguised-remuneration-contractor-loans-settlements-and-a-deed-of-release-spotlight-48

Consultation: SDLT surcharge for non-UK resident buyers

HMRC is consulting until 6 May 2019 on a new 1% SDLT surcharge relating to property bought in England and Northern Ireland. It will apply to freehold and leasehold purchases of residential property made by non-UK resident individuals and non-natural persons including companies, trusts and partnerships.

The document also includes a short survey which aims to provide the government with information on the potential impact of the surcharge on the market and how this may alter the behaviour of purchasers.

www.gov.uk/government/consultations/stamp-duty-land-tax-non-uk-resident-surcharge-consultation

Business Taxation

Capital allowances and grain storage facility (Lecture B1121 – 17.33 minutes)

Summary - Expenditure incurred on the construction of a facility for the purposes of drying, conditioning and storing grain qualified for plant and machinery capital allowances.

In 2010, after he had been in a farming partnership with his brother for some 10 years, Stephen May had the opportunity to set up his own business. A large part of the new business involved grain production for sale to local farms and feed mills.

He needed a facility for drying and conditioning the grain that he grew after it had been harvested, and for storing the grain until it was sold. He had this facility constructed on his land in about 2011. The quote for construction stated that the structure was: "to manufacture and supply a Grain store building purposely designed for customer to include control of temperature and moisture levels for grain". They argued that the structure served a specific function and that the facility was a "silo provided for temporary storage" within the meaning of s23 list C CA 2001" which excluded it from being a building and so eligible for plant and machinery capital allowances.

HMRC considered the facility to be a "building" not eligible for capital allowances. They argued that the grain was stored for up to 10 months so that its storage was not temporary.

Decision

The First Tier Tribunal found that the facility was built for the storage of grain, but also for drying it and maintaining it in an optimal condition. It was specifically designed for these purposes, with a pitched roof, thick walls and air inlets. It was therefore a silo.

The Tribunal concluded that the storage was temporary. It observed that it was in Stephen May's interest to sell the grain as soon as possible after it was harvested and that the silo was empty for two months every year to allow for cleaning, which was an impediment to indefinite storage.

The Tribunal held that the facility was 'plant and machinery', as it performed a particular function.

Stephen May and others v HMRC (TC06928)

Capital allowances on acquired property

In May 2011, Glais House Care Ltd (GHC) bought the trade and assets of a residential nursing home from the administrators of KCH for £1.7M. This was allocated as follows:

- £1 for contracts
- £35,000 for equipment
- £1 for fixtures and other assets attached to the building
- £164,996 for goodwill
- £1 each for intellectual property and licences, and
- £1.5M for the property

In KCH's final accounting period, it was agreed between the parties that a disposal value of £35,001 had been taken into the capital allowance pool, for the equipment and fixtures, which resulted in a balancing allowance of £50,503.

GHC submitted a capital allowance claim based on a valuation report of the fixtures within the property at the time of sale. This report valued the fixtures at £318,792.

At the time of the sale the claim to capital allowances was based on the apportionment of the proceeds of sale on a just and reasonable basis as set out in CAA 2001, s 562(3). This was limited by the amount that the past owner 'has been or is required to bring into account' (CAA 2001, s 185(3)), i.e. the disposal value, plus any installation expenditure on the buildings. The disposal value is further limited by the qualifying expenditure that KCH incurred on the fixtures, which was £220,454, so the disposal value cannot exceed the original cost on which capital allowances were claimed.

HMRC therefore argued that the amount that KCH 'has been or is required' to bring into account was £35,001 that would cap the capital allowance claim by GHC. GHC argued that this was overridden by the 'just and reasonable' basis under CAA 2001, s 562. The FTT agreed with GHC and noted that this did leave an asymmetric position between the two parties to the sale for capital allowances. The Tribunal then noted that the just and reasonable amount should be restricted to the original expenditure of £220,454.

The FTT then considered two specific items of expenditure including the mains electrical system. At the time that this was installed, KCH could not claim capital allowances on it as the integral features regime did not exist. The claim for capital allowances on this item was therefore not restricted by any original expenditure and the full just and reasonable allocated amount could be included in GHC's capital allowance claim.

The FTT noted that this asymmetric treatment has been specifically addressed by changes in 2012 which now require the buyer and seller to fix a disposal value for the value of fixtures, without this agreement no allowances are available to the buyer (CAA 2001, ss 187A, 187B). However, the case is relevant for any claims prior to the change in legislation.

Glais House Care Limited v HMRC [2019] UKFTT 059.

Contributed by Joanne Houghton

No change of basis period (Lecture B1121 – 17.33 minutes)

Summary – The 18 month test contained within s217(3) ITTOIA 2005 had not been satisfied and so the actor's change of accounting date was not effective for tax purposes.

Rupert Grint was an actor who prepared annual accounts to 31 July each year but wanted to change his accounting date to 5 April. He prepared accounts for the 12 months to 31 July 2008 that were taxed in 2008/09.

He then prepared two sets of accounts both of which ended in 2009/10 for his tax return figures:

- 2009 Schedule Accounts (12 months to 31 July 2009);
- 2010 Schedule Accounts (8 months to 5 April 2010).

Under s197 ITTOIA 2005 the 'accounting date' in relation to a tax year is the date in the tax year to which accounts are drawn up, or if there are two or more such dates, the latest of them. On this basis, the correct accounting date for 2009/10 was 5 April 2010 and he would be taxed on the 12 months of profits to this date.

Using the two sets of accounts referred to above and adopting this change of accounting date, Rupert Grint understood that he would be accelerating the 8 months of profit from 1 August 2009 to 5 April 2010 to be taxed in 2009/10. With no change of accounting date, these profits would have fallen into the old year ended of 31 July 2010 and been taxed a year later in 2010/11. This meant that he avoided these profits being taxed at the new higher rate of 50% that was introduced in 2010/11.

However, under s216(4), if the conditions in s217 are not met, the basis period for the tax year is the period of 12 months ending with the old accounting date. So in other words, as if the change in date had not occurred. So key to this case was whether s217 applied and more specifically whether the 18 months test in s 217(3) was satisfied.

Under s217(3), the 18 month test is met if the period of account ending with the new accounting date in the tax year in which the change of accounting date occurs is not longer than 18 months. Following a VAT control visit in 2011, HMRC discovered that Rupert Grint's accountants had also prepared another set of accounts referred to as the Long Accounts covering the full 20 months from 1 August 2008 to 5 April 2010. Rupert Grint had signed these at a meeting in October 2010. HMRC reasoned that the "period of account" for the purposes of s989 ITA 2007, being the "period for which the accounts of the business are drawn up", was the period covered by the Long Accounts and was therefore longer than 18 months. HMRC argued that there had been no change of accounting date for tax purposes.

Decision

The Upper Tribunal agreed with the First Tier Tribunal finding that the Long Accounts better fitted the description in s 989 ITA 2007 of being 'the accounts of the business'. They were the accounts drawn up to discuss with Mr Grint how he was doing and would enable him to compare his performance from year to year. The Tribunal concluded that the 'period of account' was longer than 18 months, and the test in s217(3) was not satisfied.

The Upper Tribunal found that tax return entries do not automatically change an accounting date; it is the <u>underlying accounts</u> drawn up to the new accounting date that effect this change, provided that the change of accounting date legislation is followed. The self-employment supplementary page entries had been arrived at by simply time apportioning the Long Accounts. Equally, Rupert Grint could not substitute the New Accounts, which did not exceed 18 months as these accounts were drawn up by his advisors during the HMRC enquiry so after the filing of Mr Grint's 2009/10 return.

Rupert Alexander Grint v HMRC [2019] UKUT 0028 (TCC)

Poor accounting records and the presumption of continuity

Stirling Jewellers (Dudley) Limited ('Stirling') was originally a retail jeweller but with the financial crash in 2008 came a significant increase in the demand for gold which resulted in the price rising from £435 an ounce to £1,165 an ounce.

The company started to focus on the buying and selling of scrap gold with a lot of the business being conducted for cash.

The increase in the size of the company over the period in dispute was huge, starting from a turnover of £5.2 million in 2008 increasing to £144 million just three years later in 2011.

With only one bookkeeper employed as the sole accounting staff and paper records this increase in turnover led to chaos in the maintenance of accounting records up to late 2011 when an accountant was employed.

The accountant started working only a few days at first but by 2013 he was attending the premises weekly and reviewing the system. Using a base year of 2011, HMRC and the accountant tried to resolve accounting discrepancies. It was clear from this process that the accounting period 2010 and 2011 were short in terms of assessable profits and adjustments had been proposed by HMRC.

The FTT found that there should be an additional assessment of corporation tax for 2010 and 2011 but that the basis of calculation by HMRC was inappropriate and should be re-worked.

HMRC also tried to use the 2011 omissions in records as a basis for assessing earlier and later years by presuming that similar errors or omissions would have taken place in those years – the presumption of continuity.

Jonas v Bamford (Inspector of Taxes) [1973] STC 519 states:

> 'But, so far as the discovery point is concerned, once the inspector comes to the conclusion that, on the facts which he has discovered, Mr Jonas has additional income beyond that which he has so far declared to the Inspector, then the usual presumption of continuity will apply. The situation will be presumed to go on until there is some change in the situation, the onus of proof of which is clearly on the taxpayer.'

The FTT rejected this presumption for the years before 2010 as the situation was different in terms of the volume of transactions in those earlier years than in 2011. The basis presumption for later years was also dismissed as again the situation had changed in terms of employing an accountant and setting up a computerised record keeping system.

In addition to corporation tax assessments, HMRC sought to raise assessments on the two main shareholders under the loan to participators rules ((ICTA 1988, s 419/ CTA 2010, s 455) on the missing cash amounts arguing that they must have taken the amounts out of the business.

The FTT did not believe that this could be the case based upon:

- they believed the main shareholder as a witness
- the shareholders did not show any material increases in their wealth or property
- none of the employees saw anything untoward being done by the shareholders

Therefore, the appeal against the assessments to tax under the loan to participators rules was allowed.

Stirling Jewellers (Dudley) Ltd v HMRC [2019] UKFTT TC06940

Contributed by Joanne Houghton

Liability of the auditors for movements on interest rate swaps

Between 2004 and 2009, Manchester Building Society ('MBS') issued a number of fixed interest lifetime mortgages, which released equity to homeowners on terms that the loan and interest were not repayable until the owner either entered a care home or died. MBS also purchased interest rate swaps to hedge the risk that the variable rate of interest it paid to acquire funds would exceed the fixed rate that it received from borrowers. With a change in accounting rules from 2005 onwards, these swaps were put onto the balance sheet at fair value with any movements being reflected in the overall profits of MBS.

To mitigate the impact of this movement, MBS's auditors Grant Thornton (GT) advised MBS it could apply hedge accounting that would reduce the volatility of the interest rate swaps in the financial statements. This was the accounting treatment for six years when it was apparent that MBS should not have applied hedge accounting and there was a resulting exposure to £32.7M of losses. MBS made the decision to close out the swaps and therefore this loss became a realised one.

MBS contended that GT were responsible for this loss because they had been forced to close out the swaps following the correction of negligent advice. They argued that this was an 'advice' case and therefore GT were liable for all the foreseeable consequences of entering into the swaps in reliance on that advice. Alternatively, this was an "information" case, and GT was liable because the losses would not have been incurred if the advice regarding hedge accounting had been correct.

The treatment of advice and information cases has been established in Hughes-Holland v BPE Solicitors [2017] UKSC 21 and meant that for advice cases it will have been left to the adviser to consider what matters should be taken into account in deciding whether to enter into the transaction, and they will be responsible for guiding the whole decision-making process. In such a case the adviser will have assumed responsibility for the decision to enter the transaction and will be liable for all the foreseeable financial consequences of so doing. In an information case, the adviser has not assumed responsibility for the whole transaction and will only be responsible for the foreseeable financial consequences of the information provided being wrong. Only losses that would not have been suffered had the information been correct are recoverable. This is referred to as the SAAMCO principle.

It was found that in this case the SAAMCO principle did not apply as GT had not been involved in the whole decision-making process in relation to the swaps so it could not be an advice situation. Additionally, it could not be an information case as the movement on the value of the swaps did not arise from incorrect advice about the accounting treatment. The loss arose as a result of movements in fair value of the swaps.

Therefore GT was not responsible for the losses on the interest rate swaps.

Manchester Building Society -v- Grant Thornton UK LLP [2019] EWCA Civ 40

Contributed by Joanne Houghton

Corporate intangible fixed assets – relief for goodwill (Lecture B1123 – 17.52 minutes)

On 21 December 2018, the Government published draft legislation as part of various important amendments to the current Finance Bill. One of them relates to a new targeted relief for goodwill and other intangible fixed assets with effect from 1 April 2019.

It is reasonable to say that, following the February 2018 consultation on the corporate intangible fixed assets regime and comments made by the Chancellor in his last Budget, these changes were widely anticipated.

The latest rules repeal S816A CTA 2009 (which denied corporation tax relief for relevant assets such as goodwill and other customer-related intangibles acquired on or after 8 July 2015) and reintroduce a limited relief for the acquisition of relevant assets on or after 1 April 2019 where a business has been acquired which includes qualifying intellectual property for use in the course of a company's trade or activities.

At the time of the Budget, the Government stated that relief would only be given for goodwill and would not be extended to customer-related intangibles. Interestingly, in what companies will undoubtedly see as a positive development, the revised code now confirms that assets such as customer information, customer relationships, unregistered trademarks and licences or other rights in respect of any of these assets are to be included.

It should be remembered that intangible fixed assets that do not fall into the relevant asset definition were not subject to the 2015 prohibition. Amortisation relief continued to be available on or after 8 July 2015 for intellectual property assets such as patents, know-how, registered designs and copyrights and this is still the case.

Where, on or after 1 April 2019, a company acquires relevant assets as part of a business acquisition, the company will be treated as having made an irrevocable election to write down the cost of such assets at a fixed rate of 6.5% per annum. However, relief may be partially restricted if the amount of the company's expenditure on qualifying intellectual property multiplied by six is less than its expenditure on the relevant assets acquired.

In other words, if the company's qualifying intellectual property expenditure is £1,000,000 and the cost of the relevant assets acquired is £9,000,000, the formula set out in the Finance Bill produces a fraction of:

$$\frac{1{,}000{,}000 \times 6 = 6{,}000{,}000}{9{,}000{,}000}$$

i.e. two-thirds. Given that this comes to less than one, only two-thirds of the company's expenditure on relevant assets will be eligible for the new writing down relief. The Government's objective is to limit the amount of expenditure on relevant assets for which the company can receive the 6.5% relief to a multiple of six times the company's expenditure on qualifying intellectual property assets.

It is worth noting that the legislation gives HM Treasury the power to amend, at a later date, both the fixed rate percentage of relief and the multiple of six, if that is thought to be necessary.

Where relevant assets are acquired other than as part of a business acquisition or where the business acquisition does not include expenditure on qualifying intellectual property, no relief is available.

Qualifying intellectual property is defined as an intangible fixed asset that meets the following two conditions:

1. It must be a patent, registered design, copyright, design right, plant breeders' right or a licence or other right which relates to any of the above (or a corresponding foreign equivalent); and

2. It must not have been acquired before 1 April 2002.

Registered trademarks are excluded from the definition of qualifying intellectual property, as is know-how if it is not protected by one of the rights listed above. Such trademarks were originally included in the scope of qualifying intellectual property at the time of the Budget announcements, but their subsequent omission has presumably come about because of the need to fund the increase in the multiplier compared to what was initially proposed.

Provisions to reinstate the FA 2015 legislation that sought to discourage tax-motivated incorporations are also included. These will apply where the transferor of goodwill is an individual who is related to the acquiring company or is a firm of which the individual is a partner.

Intangible fixed assets acquired before 8 July 2015 will not be impacted by these changes and so full relief should continue to be available for these assets.

It is intended that the revised rules will have effect in relation to accounting periods beginning on or after 1 April 2019. If a company's accounting period straddles this date, it will be treated as having ended on 31 March 2019, with a new accounting period beginning on 1 April 2019.

Contributed by Robert Jamieson

Structures and Buildings Allowance – Impact of Leases (Lecture B1122 – 7.28 minutes)

In the October 2018 Budget, the Chancellor announced the introduction of the new Structures and Buildings Allowance (SBA), which gives a writing down allowance of 2% p.a. (straight-line basis) on qualifying costs incurred on/after 29 October 2018.

This article looks at the impact of the SBA on leased properties and, in particular, which party will be entitled to claim the allowance. (See technical notice published by HMRC on 29 October at *www.gov.uk/government/publications/capital-allowances-for-structures-and-buildings-technical-note.*

Where the granting of a lease is substantially no different from a purchase of the interest in land, the SBA will be allocated to the lessee, but the allowances will remain with the lessor if the term of the lease is less than 35 years.

Where neither of the above applies, a calculation will be required. The lessee will become entitled to the full amount of the SBA If the amount paid as a capital sum for a lease [C] is ≥ 75% of the sum of:

- that capital amount [C], and
- the value of the retained interest in the property (RV).

The income tax rules (ITTOIA 05, s.277) treat part of a lease premium as chargeable to income tax, leaving the balance as capital proceeds. This is the 'capital amount' referred to above.

Example – Pep Ltd leases a property to Jurgen Ltd

Pep Ltd owns a building on which it claims the SBA. It then grants a 40-year lease over the entire building to Jurgen Ltd, which will use it in its trade. Pep Ltd receives a premium of £35 million, but only a peppercorn rent is payable. Pep Ltd's retained interest in the property is agreed to be £10 million.

The income tax rules mean that, for a 40-year lease, 22% of the premium is chargeable to income tax, leaving £27.3 million (78% of £35m) as capital proceeds.

Using the above formula, the proportion is: C / (C + RV). This is 27.3 / (27.3 + 10), i.e. 73.2%.

Because the lease is for over 35 years and the proportion is < 75%, Pep Ltd will continue to be entitled to claim SBA, rather than Jurgen Ltd.

Had the reversionary value of the property been £9m rather than £10m, the calculation would have given a figure of 75.2%, in which case any SBA would be available to Jurgen Ltd rather than Pep Ltd.

In the latter case, when the lease expires in 40 years' time, any remaining SBA will be able to be transferred to the person holding the retained interest at that time, if they hold their interest as part of a qualifying activity.

It is important to appreciate that how much you receive as the capital sum for a lease may impact on your ability to continue to claim the SBA.

Contributed by Kevin Reed

Group relief on appointment of a receiver

One essential requirement for group relief between subsidiary companies in a group is that they are both 75% subsidiaries of a third company (CTA 2010, s 152(b)). A 75% subsidiary means that at least 75% of the ordinary share capital of the subsidiary is beneficially owned directly or indirectly by the parent company (CTA 2010, s 1154). Beneficial ownership is additionally specified as being entitled to at least 75% of profits or assets in a winding up of the company (CTA 2010, s 151(4)).

The subsidiary companies will not be members of the same group if arrangements are in place, during the accounting period when the group relief is available for surrender, whereby a person could obtain control of one of the subsidiary companies but not the other (CTA 2010, s 154(3) 'Effect 2').

When looking at control this means the power of a person to secure that the affairs of the company are conducted in accordance with their wishes either by means of holding of shares or possession of voting rights or as a result of any power conferred by the articles of association or other document regulating the company (CTA 2010, s 1124(2)).

This case involved Farnborough Airport Properties Company Ltd (FAPC) and Farnborough Properties Company Ltd (FPC) that were both, in the relevant period, subsidiaries of Kelucia Ltd (Kelucia), as was Piccadilly Hotels 2 Ltd (PH2). At all times, apart from the period under review, the companies met the requirements for group relief as described above. In June 2011, PH2 was placed into receivership by the Bank of Scotland Plc in exercise of its rights under a debenture. The receivership extended to the whole property of the company and allowed the receivers to carry on the business of the company as they saw fit.

FAPC and FPC claimed group relief in the year to 31 May 2012 of £10.6M from PH2. HMRC denied the claim on the basis that the appointment and conduct of the receiver under the debenture constituted arrangements which meant that Kelucia no longer had control of PH2 on their appointment.

The taxpayers contended that Kelucia still controlled PH2 at shareholder level and that the debenture would not constitute an 'other document' which would confer powers of control.

Although there have been cases looking at the meaning of arrangements and control in relation to group relief, two of which were cited in this case i.e. Pilkington Bros. Ltd. v Inland Revenue Commissioners [1982] 1 WLR 136 ('Pilkington') and Irving v Tesco Stores (Holdings) Ltd [1982] STC 881, this is the first case where the impact of receivership on control has been considered.

The FTT and the UT both upheld HMRC's position and the taxpayers had therefore appealed to the Court of Appeal.

The Court of Appeal also found in HMRC's favour and denied the group relief claims. They noted that Parliament must have required the meaning of control to be taken further than just shareholdings because of the additional need to establish that the affairs of the company are conducted in accordance with the shareholders' wishes. The discussions in the Pilkington case seemed to contradict this as they had proceeded on the basis that the shareholders taken together did have control of the company. However, it was highlighted that in that case Pilkington was a solvent group and the shareholders could have removed the directors if they had felt they were not conducting the affairs of the company in accordance with their wishes.

In the current case the shareholders could not intervene in the actions of the receivers, the company was now being run in the best interests of the creditor. Therefore, the appointment of the receivers meant that Kelucia did not control PH2.

The next question addressed was whether there were arrangements in place. The taxpayers argued that this requirement be interpreted purposively, and they felt it was intended to ensure that group relief remained available within an economic group and did not pass to an unrelated third party. The judges noted that nothing in the legislation suggested that this was an anti-avoidance measure and in fact the wording was quite broad, e.g. 'of any kind', and 'whether or not in writing' (CTA 2010, s 156(2)). Arrangements would involve an element of deliberate planning or co-ordination to bring about a state of affairs and this is satisfied by the appointment of the receivers.

Farnborough Airport Properties Co and another company v HMRC [2019] EWCA Civ 118.

Contributed by Joanne Houghton

OECD and digital economy taxation

The OECD has been working to achieve consensus among nations on how to update the international tax rules to more appropriately tax multinationals that operate digitalised businesses since the July 2013 publication of the OECD base erosion profit shifting (BEPS) plan.

The OECD inclusive framework has issued a policy note on 29 January 2019, setting out two main areas for renewed international discussions on agreeing a long-term solution for taxation of the digital economy by 2020.

The first will focus on modifying existing transfer pricing rules, adapting the 'nexus' principle to take account of marketing intangibles, user contribution and significant economic presence, while the second will explore rules designed to give jurisdictions a remedy in cases where income is subject to no or only very low taxation. Both of these will be subject to consultation.

Contributed by Joanne Houghton

OECD consultation document on digital tax

One of the main areas of focus of the Base Erosion and Profit Shifting (BEPS) Action plan are the tax challenges arising from the digitalisation of the economy and in 2015 the OECD issued its Action 1 Report on Addressing the Tax Challenges of the Digital Economy. This report also highlighted that digitalisation raises broader tax issues than BEPS that relate to the question of how taxing rights on income generated from cross-border activities in the digital age should be allocated among countries.

In March 2017 the Task Force on the Digital Economy (TFDE) was mandated to produce an interim report by 2018 and a final report by 2020 on the implication of digitalisation for taxation. The interim report was issued in April 2018 and one of the conclusions was that although other BEPS action points had realigned income from intangibles with value creation there were still risks in relation to highly mobile intangibles being moved into low-tax environments.

In addition, the interim report looked at the wider impact of digitalisation and reviewed new business models that were being created, these were described as:

- scale without mass
- a heavy reliance on intangible assets
- the role of data and user participation

This work emphasised the need for a review of the nexus and profit allocation rules and the feasibility of different technical solutions that are consistent with the principle of aligning profits with underlying economic activities and value creation.

On 13 February 2019, the OECD published a consultation document - 'Addressing the tax challenges of the digitalisation of the economy'. The consultation document sets out various proposals that have been suggested to tackle the issues of digitalisation so that external stakeholders can give their views. The proposals are only described at a high level, but they have been split into the broader tax issues of a 'Revised profit allocation and nexus rules' section and the impact of other BEPS actions in the 'Global anti-base erosion proposal' section.

Revised profit allocation and nexus rules

The consultation highlights that the business models described in the interim report i.e. scale without mass, a heavy reliance on intangible assets, and the role of data and user participation, allow highly digitalised businesses to create value through activities closely linked with a jurisdiction without a need to establish a physical presence e.g. having a web-based platform used by residents of a territory which creates value for that business but no physical presence.

Hand-in-hand with the nexus, or taxable presence, issue is profit allocation. The consultation describes situations where some multinational enterprises (MNEs) with highly digitalised business models are able to establish local affiliates in market jurisdictions. However, the local affiliates are structured to have no ownership interest in intangible assets, not to perform development, enhancement, maintenance, protection and exploitation of intangibles (DEMPE) functions, and not to assume any risks related to such assets. Accordingly, only a modest return is allocated to these 'limited risk distributors,' or LRDs.

Thus, without effective changes to profit allocation rules, an MNE group may seek to sidestep the nexus issue by establishing LRDs that are not entitled to an appropriate share of the group's profit.

Lastly the document considers whether being able to build business and value remotely could also be achieved by more traditional businesses and whether the rules should be extended to them.

The proposals in this area are:

- User participation proposal

  This seeks to revise profit allocation rules to accommodate the value creating activities of an active and engaged user base. In addition, the nexus rules would be revised so that the user jurisdictions would have the right to tax the additional profit allocable to them. The consultation notes that the application of arm's length principles is not enough.

  In essence this proposal would work by allocating a proportion of the non-routine profits of an MNE group from the entities which are currently realising the profits to the jurisdictions where the users are located, with the allocation being done on agreed basis e.g. revenue.

  The proposal would rely on formulas to approximate the value of users and the users in each country in order to be pragmatic about the difficulties of establishing such data. Mainly this would be focussed on highly digitalised businesses e.g. social media, search engines and online marketplaces.

- Marketing intangibles proposal

  This seeks to modify current transfer pricing and treaty rules to require marketing intangibles and risks associated with such intangibles to be allocated to the market jurisdiction. The proposal considers that the market jurisdiction would be entitled to tax some or all of the non-routine income properly associated with such intangibles and their attendant risks, while all other income would be allocated among members of the group based on existing transfer pricing principles.

  Essentially this proposal sees value being created in the jurisdiction through marketing intangibles e.g. brand names through the favourable attitude of customers in that jurisdiction and other marketing intangibles through the activities targeted at users in that jurisdiction e.g. customer lists, data and relationships. For example, online retailers with no or only a small physical presence in one country may develop a large user and customer base in that country and know more about these users' and customers' shopping preference than a local book shop around the corner.

  The proposal would allocate non-routine profit attributable to the use of marketing intangibles related to the market jurisdiction to that jurisdiction, even in the absence of a taxable presence and allow the market jurisdiction the right to tax this marketing intangible profit. So, it would be similar to the user participation model.

  In this proposal the allocation of income could be done on the basis of economic contribution to profit or on a more mechanical or formula-based approach. The allocation to jurisdictions would be based again on a common basis e.g. revenue.

- Significant economic presence proposal

  This proposal takes the view that the current nexus and profit allocation rules no longer have relevance and so should be changed so that a taxable presence in a jurisdiction would arise when a non-resident enterprise has a significant economic presence on the basis of factors that evidence a purposeful and sustained interaction with the jurisdiction via digital technology and other automated means.

The factors would be revenue; a user base and data input; volume of digital content; billing and collection in local currency; maintenance of local website; responsibility for goods delivery and services in the territory or sustained marketing and sales in the jurisdiction to attract customers. Nexus would be established if a combination of these factors occurs.

The allocation of profit under this proposal could be done by applying the global profit rate of the MNE group to the sales generated in the jurisdiction although the consultation notes other methods could be considered.

The consultation goes on to compare the proposals and raise queries for public comment.

Global anti-base erosion proposal

The proposals in this section of the consultation look to address the risk that still exists of profit shifting to entities in low taxation jurisdictions. There are two suggested complementary rules:

- The income inclusion rule - this would tax the income of a foreign branch or a controlled entity if that income was subject to a low effective tax rate in the jurisdiction of establishment or residence. This would operate through a minimum tax – there would be a requirement that a significant shareholder in a corporation would need to bring into account a proportion of income that was not subject to a minimum rate of tax. It would be applied on a per jurisdiction basis with underlying tax relief available

- A tax on base eroding payments - this would deny a deduction or treaty relief for certain defined categories of payments made to a related party unless those payments were subject to a minimum effective rate of tax. It would be supplemented by a 'subject to tax' rule which would deny treaty benefits under certain articles if the undertaxed payment would otherwise be eligible for relief under the treaty.

These would both be introduced through changes to domestic law and double tax treaties and the consultation notes there are several technical issues that would need to be considered. These new rules would apply to more than intangibles – they could cover areas such as cross-border financing.

The consultation will run until 1 March for written comments and then there will be a public consultation on 13 and 14 March 2019.

Contributed by Joanne Houghton

VAT

VAT Notice 701/41: Sponsorship (Lecture B1121 – 17.33 minutes)

Sponsorship is a payment to a charity, social project or a business for which the sponsor receives something in return. Payment may be in the form of money, goods and services or a combination of money with goods and services.

This notice explains how VAT applies if a taxpayer gives or receives sponsorship. A new section on crowdfunding has been added.

Receiving sponsorship as a taxable supply

Sponsorship is a taxable supply where money is received and in return the taxpayer is obliged to provide the sponsor with a significant benefit. Examples include:

- naming an event after the sponsor giving the sponsor a business benefit;
- displaying the sponsor's company logo or trading name (not if connected to a government agency or charitable foundation);
- participating in the sponsor's promotional or advertising activities;
- giving free or reduced price tickets;
- allowing access to special events such as premieres or gala evenings;
- providing entertainment or hospitality facilities;
- giving the sponsor exclusive or priority booking rights.

Where the benefit provided in return for the payment is an exempt supply for VAT purposes, the exemption will apply and the income received will not be taxable.

Receiving sponsorship that is not a taxable supply

Receipt of financial or other support in the form of donations or gifts will be outside the scope of VAT if given freely or for something insignificant in return

Examples include:

- giving a flag or sticker;
- acknowledging the donor in a list of supporters in a programme or on a notice;
- naming a building or something else after the donor;
- giving a certificate which acknowledges a person's donation;
- payments for buying clothing that supports a campaign but cannot realistically benefit the donor.

Receiving mixed sponsorship and donation

Provided the donation is entirely separate from the sponsorship agreement, the business does not need to account for VAT on any donation or gift but it must be clear that any benefits the sponsor gets are not conditional on making the donation or gift.

Providing sponsorship

Where sponsorship is provided in the form of goods or services rather than in money, this will be treated as making taxable supplies if the following are provided:

- goods and services to somebody who, in return, is making a taxable supply;
- goods to somebody as a gift or donation, these may be caught under the business gift rules (see VAT Notice 700/7);
- services to somebody as a gift or donation, then no VAT is due.

Value of any taxable supplies

Having decided that an amount is a taxable supply, the business must account for VAT that value. If the sponsorship amount is agreed without allowing for VAT, the amount received is treated as VAT inclusive.

Crowdfunding

Crowdfunding is the process of raising funds for a project through the internet on specifically designed platforms. The VAT treatment of supplies is no different to normal sponsorship monies so where:

- nothing is given in return for the funding, it will be treated as a donation and not liable to VAT – the position is the same where all that the funder receives is a bare acknowledgement, such as a mention in a programme or something similar;
- the funder receives goods or services that have a real value associated with them (e.g. tickets), VAT will be due;
- the payment is for a combination of a donation and goods or services and it is clear that the donation element is optional then that part of the sponsorship is treated as a non-taxable donation.

Where the funder is entitled to a financial return such as interest, dividends or profit share, this is treated as an investment and any payment due to the funder will not normally be liable to VAT. However, where the arrangement is more by way of a royalty based on a supply of intellectual property or some other benefit, the 'profit share' is likely to be consideration for a supply.

www.gov.uk/guidance/sponsorship-and-vat-notice-70141

Loyalty scheme and input tax (Lecture B1121 – 17.33 minutes)

Summary - VAT incurred on fees paid by a subsidiary of the Tesco group to third party suppliers as part of a loyalty scheme was deductible.

This appeal concerns the VAT treatment of one feature of the ‘Clubcard’ loyalty scheme operated by Tesco PLC. Participating customers accumulate Clubcard points when they buy goods at from Tesco’s stores or other Partners.

Provided the Clubcard member has accumulated sufficient points, their points are converted into vouchers that can be used in one of two ways:

1. Vouchers are used to obtain a discount against purchases of goods in Tesco stores or online;

2. Vouchers can be exchanged through a Tesco subsidiary, Tesco Freetime Ltd, for ‘Reward Tokens’ which may then be used to acquire goods or services from third parties, such as museums, cinemas or restaurants, known as Deal Partners.

This case considered the VAT position of Tesco Freetime Ltd under this second option.

Typically a Reward Token will have a face value higher than the voucher for which it is exchanged so, for example, a Clubcard member may be able to exchange a voucher conferring an entitlement to a £2 discount in Tesco stores for a Reward Token that gives the holder a £4 discount on a meal at Pizza Express.

Under this scheme, Tesco Freetime Ltd pays the Deal Partners a ‘Deal partner’ fee calculated as a percentage of the face value of the Reward Tokens

The question raised by this appeal was whether Tesco Freetime Ltd is entitled to deduct the VAT paid on the Deal Partner Fees as input tax.

HMRC’s argued that the Deal Partner Fee was paid by way of third party consideration for supplies of Rewards made by the Deal Partners to Clubcard members and not to Freetime. It is not consideration for a supply of anything to Tesco Freetime Ltd and no part of the VAT element of the Deal Partner Fee can be deducted by them as input tax.

Alternatively, HMRC contended that the Deal Partner Fee is to be apportioned, so that as to (the smaller) part, it is payment for a service provided by the Deal Partner to Tesco Freetime Ltd and as to (the greater) part, it is payment for the supply of Rewards by the Deal Partner to Clubcard members. On this alternative case, Tesco Freetime Ltd would be entitled to deduct as input tax only the VAT paid by it on that part of the Deal Partner Fee that was apportioned towards the service provided by the Deal Partner to it.

Tesco Freetime Ltd contended that all of the Deal Partner Fee was paid in respect of services by the Deal Partner to them. In the contract between Tesco Freetime Ltd and the Deal Partners it was stated:

> “The [Deal Partner] shall supply to Tesco Freetime the services (to include provision of Rewards to Tesco Clubcard Members) as required by Tesco Freetime to enable Tesco Freetime to perform and discharge its obligations to provide or procure the provision of Rewards to Tesco Clubcard Members in accordance always with the Terms and Conditions printed overleaf (Fulfilment Services).”

The provision by the Deal Partner of, for example, a cinema ticket or pizza to a Clubcard Member constitutes the supply of a “Fulfilment Service”, to Tesco Freetime Ltd with input tax being fully deductible.

The First Tier Tribunal found in favour of Tesco and so HMRC appealed.

Decision

Referring to Marriott Rewards [2018] STC 1144, the Upper Tribunal said that when considering the extent to which sums Tesco Freetime Ltd pays to Deal Partners constitute consideration for a supply of services to Tesco Freetime Ltd they should consider both the terms of the contracts between Tesco Freetime Ltd and Deal Partners as well as the commercial and economic reality of the arrangement as a whole.

The whole purpose of the scheme was to benefit Tesco Stores, by promoting customer loyalty. Tesco Freetime Ltd operated its business procuring Deal Partners to accept Reward Tokens in exchange for the provision of goods and services as rewards. Both the contracts and economic reality led the Tribunal to conclude that Tesco Freetime Ltd paid the Deal Partner Fee as consideration for Deal Partners agreeing to honour Rewards that Tesco Freetime Ltd has provided to Clubcard members in the course of its business. Neither the contracts nor economic reality suggested that only part of the sums that Tesco Freetime Ltd paid was consideration for services supplied to Freetime.

HMRC’s appeal was dismissed.

NOTE: Although the Tribunal found in favour of Tesco Freetime Ltd, this company is part of the Tesco PLC VAT group and so it is actually Tesco PLC, as representative member, that would be entitled to reclaim the VAT.

HMRC v Tesco Freetime Ltd and Tesco PLC[2019] UKUT 18

Single business or two separate businesses (Lecture B1121 – 17.33 minutes)

Summary – From 1 December 2013, the floor screeding was a business carried on by the partnership that was separate from the plastering carried on as a sole trader business.

Darren Vaughan registered for self-assessment in April 1994 as a sole trader. In March 2012, he applied to Gwynedd Council for a local investment fund grant to purchase a liquid screed pump. His application stated that he was a sole trader who undertook “plastering, pebble dashing & liquid floor screeding”. He stated that the screed pump would “create more work & increase company turnover”. On 27 April 2012, the Council approved his application.

On 1 December 2013, Darren Vaughan and his wife registered for self-assessment as a partnership under the name “D & C Flooring”, with the business activity described as “flooring”. On 7 October 2014, HMRC received an application for VAT registration of the partnership. The application stated that the registration threshold had not been exceeded.

Having looked at his tax returns for 2012/13, 2013/14 and 2014/15 HMRC decided that the creation of the partnership was a disaggregation of an existing business that comprised two elements, flooring and plastering.

They considered that the business was required to register for VAT from 1 March 2013, but requested further information to enable them to determine the correct effective date of registration. This decision was subsequently upheld by HMRC in a review decision dated 12 May 2017.

Darren Vaughan's accountant maintained that there were two businesses, one being a plastering business which he had before he met his wife, the other being a new floor screeding business started in partnership with his wife. The intention was not to avoid paying VAT, but to make his business more competitive. The new flooring business related to new residential builds and was zero-rated. 75% of the cost of screeding is the material cost which included VAT. They needed to register for VAT to be able to reclaim the VAT. The reason for registering the new partnership business only would allow Darren Vaughan's general building and plastering business to continue unregistered which would benefit his customers as they in the main were unregistered householders. It would also help to keep him competitive as he stated that his competitors in this trade were all unregistered for VAT.

HMRC accepted that it is possible to split a business into two. They said that the Appellant's wife had the same responsibilities before and after the partnership was formed. There were examples of invoices, purchase orders and bank accounts relating to both businesses, showing that in reality there was no separation between them. The business structure and the way it operated were the same both before and after the partnership was formed.

Decision

The parties were agreed at the hearing that the only issue for determination by the Tribunal was whether there was one business or two.

The Tribunal considered it was a significant fact that the couple very clearly intended to separate the existing sole trader business into two businesses by registering a partnership and returning a share of the partnership profits in a partnership page in their self-assessment tax returns, with Mr Vaughan also returning the income from the plastering activities in a self-employment page in his tax return.

The Tribunal gave weight to a number of things including the plastering activities and the floor screeding activities having different customer bases, in largely different geographical locations. They noted that the wife did not have a more prominent role in the partnership; indeed her role in both businesses was similar. However, partners are not required to perform an equally prominent business role. In Parker and Parker t/a Sea Breeze Café (1999) it was said that "we should not expect relationships between husband and wife to be wholly at arm's length or commercial". It is "part of the normal husband and wife relationship" that a wife might be involved in her husband's sole trader business.

Balancing all of the evidence as a whole, the Tribunal was satisfied that from 1 December 2013, the floor screeding activities were a business carried on by the partnership that was separate from the other activities carried on as a sole trader business.

The Tribunal expressed no view on the potential application in this case of paragraphs 1A and 2 of Schedule 1 to VATA. The Tribunal's finding of fact that there were two separate businesses implies no finding as to whether or not the separation into two businesses was artificial leading to a loss of VAT.

Darren Vaughan v HMRC (TC06910)

Fulfilment House Due Diligence Scheme (Lecture B1121 – 17.33 minutes)

The government is aware that a number of Non-EU traders are shipping goods to the UK prior to sale and storing them in fulfilment houses close to their final delivery point. These goods, located in the UK, are sold on to UK customers though online marketplaces with the incorrect VAT and duty being accounted for.

In Budget 2016, the government proposed a package of measures to combat this problem, including a requirement to appoint a UK tax representative who will be liable for their VAT and/or seeking a security. Additionally, if these traders fail to comply and online marketplaces do not help stop the abuse occurring, the online marketplaces themselves become jointly and severally liable for the unpaid VAT.

The Fulfilment House Due Diligence Scheme complements the above measures, by ensuring that fulfilment houses who are part of this scheme perform proper due diligence on the goods that they fulfil.

Who it applies to?

Where a business stores goods in the UK for sellers who are established outside the EU, they will need to apply for the Fulfilment House Due Diligence Scheme if:

- the goods were imported from a country outside the EU;
- the goods are owned by, or stored on behalf of, someone established outside the EU; and
- the goods are being offered for sale and have not been sold in the UK before.

How to register

Details of how to register can be found using the link at the end of this article. Businesses, not their agent, must register before 1 April 2019. Failure to do so will mean that they will not be allowed to trade as a fulfilment business and there is a risk of a £10,000 penalty and a criminal conviction.

There is no need to register if the goods stored are the businesses own goods and their main business is transporting goods so that goods are stored temporarily as part of your transport services

Keeping records

From 1 April 2019, businesses must keep a record for six years of:

- overseas customers' names and contact details
- overseas customers' VAT registration numbers or their VAT exemption reference numbers
- the type and quantities of goods stored in the warehouse
- import entry numbers

- the country where the goods are delivered
- notices needed for overseas customers, explaining their UK tax and duty obligations

What you must check

Businesses must check all overseas customers' VAT registration numbers or VAT exemption reference number. HMRC will give more information on how to check these before 1 April 2019.

Where a business suspects that an overseas customer has not met its VAT or customs duty obligations, they:

- should work with them to help make sure they do in the future;
- must notify HMRC;
- must stop working with them if they do not start to comply with their obligations.

There are penalties of between £500 and £3,000 for failure to do so.

Changes once you're registered

Business must keep their online registered details up to date. Any changes must be notified online by the later of 30 April 2019 or within 30 days of the change.

If a business stops trading as a fulfilment business, they must tell HMRC within 30 days from the date that trading ceases.

https://www.gov.uk/guidance/fulfilment-house-due-diligence-scheme

Trading with the EU after a no-deal Brexit

HMRC has gathered together its existing guidance and added a number of new guides to its collection for traders in the event the UK exits the EU without a deal. The collection includes links to each of the detailed guides.

- How to obtain a UK EORI number to trade within the EU: This will be needed to trade goods into or out of the UK and to apply to be authorised for customs simplifications;
- Exporting and importing goods if the UK leaves the EU without a deal: From 11pm GMT on 29 March 2019, UK businesses will need to apply the same processes to EU trade that apply when trading with the rest of the world. This guide explains these processes and includes a useful checklist of things to do now;
- Declaring goods at customs: This guide explains how UK business trading with the EU should declare goods and pay any duty should the UK exit the EU without a deal; This guide looks at how businesses can use customs brokers, agents, or freight forwarders to make declarations for them or, alternatively UK businesses can obtain software enabling them to make customs declarations electronically themselves

- Customs procedures: There are a number of existing customs procedures and simplifications currently used when trading with the rest of the world that will operate in the event of a no deal Brexit;

- Moving goods through roll on roll off ports or the Channel Tunnel: importers must submit customs declarations and pay any customs duty, excise duty or VAT due. Traders can apply for HMRC's temporary arrangements to make sure that they can carry on transporting goods and make customs processes easier.

The new guidance covers the following:

- Registering for simplified import procedures: Businesses can register online for transitional simplified import procedures, reducing the amount of information required in import declarations when goods cross the border and allowing payment of duty to be deferred. HMRC will give at least 12 months' notice if it subsequently decides to withdraw these procedures.
- VAT IT system rules and processes: This guide covers claiming VAT refunds from EU countries, checking the validity of UK VAT registration numbers, deregistration from the UK VAT mini one-stop-shop, and ending of the exemption for businesses below the VAT digital services annual threshold of £8,818.

www.gov.uk/government/collections/trading-with-the-eu-if-the-uk-leaves-without-a-deal

MTD for VAT…….the final hurdle (Lecture B1124 – 14.44 minutes)

Making Tax Digital (MTD) for VAT takes effect for VAT periods beginning on or after 1 April 2019 for most businesses that are registered for VAT on a compulsory basis i.e. with annual taxable sales exceeding £85,000.

Voluntary registrations

A business that is voluntarily registered for VAT can join MTD if it wishes and, unlike businesses that join on a mandatory business, these businesses have the right to leave MTD at a future date if they wish.

Businesses deferred until 1 October 2019

About 3.5% of VAT registered businesses will not need to comply with MTD until VAT periods beginning on or after 1 October 2019.

These businesses should have received a letter from HMRC but to summarise, they come into the following categories:

- Trusts;
- Not for profit organisations that are not set up as a company;
- VAT divisions and groups;
- Public sector bodies required to provide additional information on their VAT return;
- Local authorities and public corporations;
- Overseas based traders;
- Businesses that are required to make payments on account; and
- Annual accounting scheme users.

Example

A business using the annual accounting scheme with an accounting year ending 31 August would not need to join MTD until 1 September 2020.

Soft landing period – extra concession

HMRC have confirmed in an updated version of Notice 700/22 that no penalties will apply in the first 12 months of MTD for businesses that do not have digital links between different parts of their accounting system i.e. cut and paste will be acceptable as a way of transferring data. HMRC's original policy was that there must be a digital link for software linked to the final VAT return (i.e. the last software link in the process).

The new interpretation means that no penalties will apply for the absence of digital links in the first 12 months of MTD.

Comment 1

HMRC's director in charge of MTD said in a magazine interview that the only penalties that would be made in the first year would relate to those businesses that wilfully ignore their legal obligation to keep electronic records and submit digital returns. It is anticipated that HMRC's initial energy will be directed towards those businesses that it knows should adopt MTD (based on perhaps the output tax figures declared in Box 1) rather than those that join the club but have shortcomings.

Comment 2

HMRC cannot make a conclusion that a business must join MTD based on Box 6 figures (outputs) because this box includes exempt and outside the scope sales made by a business. It is only taxable sales that count as far as the joining threshold is concerned.

Example

John earns £50,000 each year providing management services to UK based customers and £40,000 for business customers based in France. He is registered for VAT.

John does not need to join MTD because his annual taxable sales are only £50,000 i.e. less than £85,000. The work for French customers is outside the scope of UK VAT because the place of supply is France.

Extension of soft-landing period for October joiners

A further concession recently confirmed by HMRC is that the soft land period for businesses who must join MTD on 1 October 2019 will be 12 months rather than 6 months as far as penalties are concerned i.e. an extension from the original date of 31 March 2020 to 30 September 2020.

Joining MTD – how it is done

There has been some confusion and contradictory guidance about how a business joins MTD – or his agent on his behalf – there is a lack of detail in Notice 700/22:

The key point is that it is up to the business to recognise when it must adopt MTD and not for HMRC to alert it to its responsibility. This means that businesses whose taxable sales are below the £85,000 threshold as at 31 March 2019 must monitor their annual taxable sales on a rolling 12-monthly basis thereafter. If, at any point, the £85,000 figure is exceeded, then the business must join MTD from the beginning of its next VAT period. It cannot withdraw again if annual sales subsequently fall below £85,000.

Example

A business on calendar quarter VAT returns has a very good trading month in October 2019, so annual taxable sales exceeded the £85,000 threshold in the year to 31 October 2019. The business must join MTD from 1 January 2020.

Businesses registering for MTD without agent assistance should do so via their business tax account with HMRC. Once the registration process has been completed, HMRC will apparently submit a code by email that will allow a link to be made between the software operated by the business and the new API platform on HMRC's website that will allow VAT returns to be digitally submitted.

Agents can now set up their agents services account with HMRC, which means that all existing details held about clients will be transferred to the new API system. However, the agent must still go through each client on an individual basis and register them for MTD for VAT.

Comment

It is understood that there will be no need to complete a new direct debit mandate with the transfer from the Gateway system to API. However, there have apparently been some teething problems with this issue – some returns have been submitted to a 'black hole' and then the direct debit has not been collected. If this type of situation causes a late VAT payment, then it would almost certainly be accepted as a reasonable excuse by HMRC i.e. no default surcharge liability notice or surcharge would apply to the period in question.

Note – if an agent registers a client for MTD for VAT, he must provide an email address for the client. HMRC will contact the client and ask him to verify the email address. This email address will then be used for direct debit notifications.

Pilot scheme

HMRC has confirmed that any business mandated from April 2019 can now join the pilot scheme.

Petty cash expenses

The legislation confirms that records do not need to be kept digitally if it would be "impossible, impractical or unduly onerous" to do so. An example is that there is no need to digitally record every invoice on an employee expenses claim, only the totals of the claim (Notice 700/22, para 3.3.3). HMRC has also advised informally that petty cash records will not need to be recorded digitally and that the next published version of Notice 700/22 will reflect this policy. This makes sense because the numbers involved with petty cash are usually very small so there is minimal risk of major VAT errors.

Spreadsheets

Finally, there has been unfound rumours that using spreadsheets to will only be acceptable in the first year of MTD i.e. until 31 March 2020. This is incorrect. The only requirement with spreadsheet accounting is that bridging software should be in place to link the spreadsheet totals to the final VAT return figures that are submitted to HMRC.

Contributed by Neil Warren

MTD Bridging Software (Lecture B1125 – 23.48 minutes)

MTD for VAT should be straightforward when the client uses cloud based MTD compatible software and grants us advisor access. Such software includes Xero, QuickBooks, Sage etc.

Older non-API versions of SAGE, QuickBooks etc can also work without the need to upgrade to the latest API compatible version. You just need to buy bridging software.

Other lesser known software can also work with bridging software.

Bridging software

Many commercial organisations have released MTD compatible bridging software and it would be worth having a look at offerings from:

- Absolute Software
- Avalara
- BTC Software
- Intuit (QuickBooks)
- MTD Express (www.mtdexpres.co.uk)
- Neilson James Technology
- PWC (free to charities)
- VT

Virtually all are licence based with fees around £40 pa. Accountant licences are available which can reduce costs to around £2 per client per quarter – depending on the number of licences bought.

MTD Express is very good and the examples that follow are based on how that bridging software works. Other providers should have similar systems.

Example 1

ABC Limited with turnover in excess of £1m has an old SAGE Line 50 which they have used for many years. They do not want to upgrade to a cloud based system due to costs, disruption, new training etc.

For £40 a year they could stay exactly as they are and be MTD compliant with bridging software.

All of the bridging software will do the same thing but all have subtle variations. Ultimately it will be whatever is the simplest and most stable bridging software.

With bridging software, you will need to access your online account with your chosen bridging supplier. There will be a facility to upload your VAT 100 into your online account. The bridging software will read the uploaded VAT 100 and populate the API enabled VAT 100 in their system. You will then be able to upload the API enabled VAT return from the bridging software.

Bridging software should accept various import options including as XLS, XLSX (excel spreadsheets), CSV (Comma separated file) and TXT (Text file). These options cover all export functions from excel and non-API versions of accounting packages such as QuickBooks and SAGE. Their bridging software has built in mapping and when you upload from SAGE 50 (say) the mapping automatically populates the API VAT 100.

Spreadsheets

Spreadsheets can work under MTD VAT but you will need a digital link to the HMRC system. This can be provided by bridging software.

Spreadsheets combined with bridging software will also have longevity ie they will be around for a long time.

The clients existing spreadsheet system should culminate in a worksheet which has the required 9 Boxes for the VAT submission. Currently they manually input their VAT return into the HMRC system. Under MTD the spreadsheet can remain but we must change the method of submission – it cannot be manual if we are mandated into MTD.

Most bridging software will provide a template for the 9 Box VAT return and this will need to be incorporated into the clients spreadsheet system as a separate worksheet. Bridging software would expect Box 1 outputs to be in cell N10 (for example). The standard template allows the bridging software to pick up the required 9 boxes for incorporating into their API submission.

This does not mean a complete re-work of the clients excel spreadsheet. You just create a new worksheet with the downloaded VAT 100 template from the bridging software and replicate the cell links on your current VAT 100. When done delete the old VAT 100 worksheet and you are good to go. Every quarter the templated VAT 100 can be uploaded into bridging software to enable the VAT return to be submitted.

Example 2

A VAT registered IT contractor with taxable income of £100,000 keeps his accounting records on excel. His returns are on the 30 April VAT stagger.

The contractor is very comfortable with excel. His spreadsheet has various worksheets – the principle three being sales invoices, purchase invoices and a bank reconciliation. The bank reconciliation worksheet is cell linked to the receipts and payments noted on the sales invoice and purchase invoice worksheets. He has a VAT return worksheet which has the nine VAT return boxes cell linked to the appropriate cells on his sales and purchase worksheets.

The client must sign up for MTD.

He can continue with his excel spreadsheet but he must purchase bridging software to facilitate the API submission for his first MTD mandated VAT return to 31 July 2019.

He should then grant his software HMRC authority via links within the bridging software – this is a one-off exercise.

For the four VAT returns to 30 April 2020 the client could manually enter his excel VAT return numbers into the bridging software and then allow the bridging software to digitally upload to the API gateway. There is a one year soft landing for digital links. It would however be easier to upload the templated VAT return into the bridging software!

For the VAT return to 31 July 2020 and beyond he must upload his excel VAT return into his bridging software. The soft landing period for digital links has ended.

All bridging software should be compatible with excel and will allow this function.

So spreadsheets and bridging is very straightforward. From your desktop you simply access the internet and log in to your bridging software to upload your templated excel VAT 100. The bridging software will automatically populate the API enabled VAT100 from the imported file. From there you submit your return.

E-recording functions

Some of the better bridging software has e-recording functions. The bridging software would then become more than the conduit for submitting VAT 100s – it would become the digital accounting records of the business. This would be particularly useful for manual record clients who are looking for a simple solution for MTD.

The MTD Express bridging software offers specific e-recording functions for second hand margin scheme and retail schemes.

Manual records

For those who have particular issues it is worth submitting a request for a SI 1995/2518 Reg 32B Para 1(c) exemption i.e. MTD is not reasonably practicable by reason of age, disability or location etc. If granted you can continue with manual records.

If HMRC refuse then we could:

- design a spreadsheet to look like their cashbook. They may feel comfortable treating this as their new cashbook;

- see if they are able to raise sales invoices in Xero (or equivalent). If we then signed then up for bank feeds we might be able to make this work. We may spend a little more time through the quarters but less at year end.

- see if e-recording via bridging software was an option. Some of the bridging software is offering to enter data in their e-recording software from scanned cashbooks for < £10/hour.

Conclusion

Cloud based software is great for MTD but some clients may not feel inclined to go down this route.

Many will prefer to stay exactly as they are whether it be spreadsheet records, older versions of SAGE, QuickBooks etc or bespoke software.

Bridging software allows clients to continue with their current accounting systems. Individual licences are around £40 pa but agent licences can be as low as £1 or £2 per VAT return.

Bridging software will be around for a long time and it will certainly be able to deal with MTD for income tax when that arrives.

The only clients who have to change the way they do things are manual record clients unless they get an HMRC Reg 32B Para (1)c exemption.

Contributed by Dean Wootten

MTD: step-by-step guide for agents

HMRC has produced a step-by-step guide for agents to follow when working with clients to submit VAT Returns digitally. Each of the six steps has links to further guidance that's available in each area. The six steps are:

1. Talk to your clients
2. Get the right software
3. Create an agent services account
4. Link clients to your agent services account
5. Sign your clients up for Making Tax Digital
6. Authorise your software

www.gov.uk/guidance/making-tax-digital-for-vat-as-an-agent-step-by-step