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Personal tax

Chauffer driven car (Lecture P1131 – 16.11 minutes)

Summary – A car leased by a company and made available for private use was a taxable benefit, despite being driven exclusively by a mini cab driver.

Aegis Vision Limited was incorporated on 21 May 2004. Mr Agarwal is a shareholder and had been a director of the company since 2004. Mr and Mrs Agarwal lived approximately ten minutes away from the company's office by car but neither of them could drive. Mr Agarwal had never walked to the office; he had always required a driver to take him.

Mr Agarwal had known Mr Anwar in his capacity as a mini cab driver since 2004. In 2010 Aegis Vision Limited decided that they would engage Mr Anwar to be a chauffeur. In order to provide the efficiency and positive image required by Aegis Vision Limited, the company leased a Mercedes car and then entered into arrangements to sub-lease this car to the chauffeur on the following terms:

- When not being used, the car should be parked at Mr Agarwal's home address;
- Aegis required the chauffeur to use the Mercedes for assignments;
- Aegis insured the Mercedes for only the chauffeur to drive;
- The chauffeur had to drive from his home to Mr Agarwal's home and parked his car there while using the Mercedes;
- The chauffeur was required to pay a fee of £200 per month for using the car;
- Aegis refunded the chauffeur's petrol and car cleaning costs for the Mercedes;
- The chauffeur could provide a suitable alternative if he was not available to drive, but he would have to arrange appropriate insurance cover;
- The chauffeur may be engaged in another business, but the agreement did not refer to the use of the Mercedes for the purposes of that business;
- The Chauffeur agreement set out an hourly rate of £12 per hour and referred to monthly invoicing for the transport.

The Chauffeur told HMRC that the he would never use the Mercedes to transport private customers as the car was for the transportation of Mr and Mrs Agarwal but told them that he had used the Mercedes once or twice for appearances only.

Following HMRC's employer check HMRC issued assessments and penalty notices on the basis that the Mercedes was a company car available to Mr Agarwal for private use.

Decision

The First Tier Tribunal concluded that the Mercedes was made available for Aegis Vision Limited and the Agarwal's transportation assignments. Although the chauffeur held the keys and was the only insured driver, he drove his own car in his own mini cab business and he told HMRC that he did not use the Mercedes to transport fare-paying passengers.

It was Aegis Vision Limited that had entered into the lease for the Mercedes and Aegis Vision Limited remained in control of the use of the Mercedes. It was therefore Aegis that made it available to Mr and Mrs Agarwal by reason of the employment.

But was the car available for private use? S.118 ITEPA 2003 provides that a car made available in a tax year to an employee is to be treated as available for the employee's private use unless in that year the terms on which it is made available prohibit such use and it is not so used. The Tribunal concluded that the Mercedes was available for private use as Mr Agarwal conceded that the chauffeur used the car to drive him on non-business journeys and to his office a few times a month.

With Aegis Vision Limited paying the fuel costs of the car that was available for private use, the fuel charge also applied.

The First Tier Tribunal stated that the fact that Mr and Mrs Agarwal do not drive was not relevant because a charge under ITEPA 2003 applies where an asset is made available to an employee or their family. The Tribunal was not clear why HMRC did not pursue the additional tax charges that could be due on the benefit of the services of the chauffeur.

The appeal was dismissed.

Aegis Vision Limited and Mr Sanjay Agarwal v HMRC (TC07038)

Rental related penalties cancelled **(Lecture P1131 – 16.11 minutes)**

Summary – The taxpayer had not been careless when failing to inform HMRC that she had been residing on her property when renovation and repair work was undertaken prior to letting the property.

Ms Negka lived with her family at a property at Perham Road, W14 between 24 July 2009 and 11 October 2009. On separating from her husband, she moved out of the property and rented it for a number of years before selling it on 22 May 2013.

On 12 July 2013 she bought a larger property at Hippodrome Mews, W11 and lived there with her son and mother between 12 July 2013 and 16 June 2014. They moved out around 16 June 2014 when it was rented out until 23 May 2015. Ms Negka claimed nearly £20,000 of expenses that she incurred in preparing Hippodrome Mews for rental against her rental income in her tax returns for 2013/14 and 2014/15.

Ms Negka sold Hippodrome Mews on 16 June 2015 having established with HMRC on 7 April 2016 that she was entitled to claim principal private residence (PPR) relief. This relief was later disallowed and then allowed again by HMRC in 2017. This relief is not the main subject of this appeal that focuses on the rental expense claims that were disallowed by discovery assessments.

On 18 June 2015 HMRC wrote to Ms Negka asking for a schedule of information including copies of invoices to support her £20,000 expenses claim. This information was provided promptly on 23 June 2015 together with an explanation that she had spoken to two technicians at HMRC about this claim in 2013 and 2014. HMRC confirmed on 24 November 2015 that they had managed to trace and listen to recordings made where Ms Negka had asked about costs incurred before a tenant moves in. In 2013 she was advised that the expenses would be tax deductible if they were incurred with the intention of letting out the property. In the second call in 2014 it was said that a claim for allowable expenses should be made in the year the expenses were incurred.

In September 2017, while looking into whether she was entitled to claim PPR relief, HMRC became aware that there was an error in relation to the expense claim. HMRC said that in the call made in September 2013 she failed to advise that she was actually residing in the property when the repairs and renewals were being completed. This invalidated her claim for expenses incurred prior to the property being let and the expense claimed of £19,778 was withdrawn. On 4 October 2017 HMRC issued s29(1) TMA discovery assessments and penalty assessments disallowing the rental expenses. HMRC claimed that the expenses were not incurred wholly and exclusively for the purposes of letting the property as Ms Negka was living in the property at the time. The expenditure was therefore for a domestic and private purpose and not allowable. As these expenses were not deductible in 2013/14 there was no rental loss to be carried forward and used against rental income in 2014/15, so that there was an insufficiency in the assessment. They argued that this situation arose because Ms Negka was careless and that she should have made clear that she was living in the property when she spoke to HMRC about claiming the rental expenses.

Decision

The Tribunal said that the only questions before this Tribunal were whether HMRC were permitted to issue the assessments under section 29 TMA relating to the rental expenses and whether the related penalties were due.

Ms Negka conceded that she had made a mistake when she claimed expenses for repairs that were incurred when she was living at the property as they had improved her home. The deduction of the expenses claimed in 2013/14 should be disallowed under S34 ITTOIA 2005 as they were "not incurred wholly and exclusively for the purposes of the trade".

The Tribunal held that HMRC made a s.29(1) discovery relating to these expenses in the summer of 2017 when considering the PPR position on Hippodrome Mews. As the s.29(1) TMA assessments were issued a few months later in October 2017, the discovery had not become 'stale' but was it a valid discovery under s29(4) as submitted by HMRC that Ms Negka was careless?

The Tribunal said that the test to be applied was what a reasonable hypothetical taxpayer would do in such circumstances. It was incorrect to look at Ms Negka's failure to mention that she was living in the property in isolation, but to consider all the circumstances:

- Calling and writing to HMRC to tell them that she was living at Hippodrome Mews between 12 July 2013 and 16 June 2014;
- Choosing to call for advice repeatedly as she was unsure about claiming expenses before a tenant moved in and she wanted to be sure her claim was correct;

- The call transcripts demonstrated that she was told that she could claim the rental expenses if the property was available to rent.

The Tribunal sided with Ms Negka, concluding that she did not fail to take reasonable care and that she took the steps of a prudent and reasonable taxpayer. She was not careless because she made a mistake that would have been avoided if she had used a tax adviser. She researched her tax obligations and took advice from HMRC to make sure that her rental expenses claims complied with the rules and the relevant information was provided to HMRC. Ms Negka made a mistake, but HMRC had not established that Ms Negka failed to take reasonable care. The condition in section 29(4) TMA was not met and the appeals against the section 29(1) assessments for 2013/14 and 2014/15 were allowed and the penalties were cancelled.

Panagiota Negka v HMRC (TC06966)

Earlier Year Update (EYU) process change (Lecture P1131 – 16.11 minutes)

In the April 2019 Employer Bulletin, HMRC outline a trial that they are running aimed at simplifying the process for reporting corrections to previous year payroll data. Provided an employer's software supports this new function, from 20 April 2019 HMRC will accept a Real Time Information Full Payment Submission (FPS) with amended YTD information for the tax year ending 5 April 2019, which are identified after 19 April 2019.

If the trial is successful HMRC expect all payroll software providers will support the change from April 2020 so the EYU will no longer be a valid submission type for the 2019/2020 and later tax years. All amendments to payroll data for the year 2019/2020 and future years, identified after the year end, will need to be made on a FPS.

HMRC's Basic PAYE Tools software will also be amended in April 2020 to support the change to a FPS.

www.gov.uk/government/publications/employer-bulletin-april-2019

Employer Bulletin: EU Exit edition (Lecture P1131 – 16.11 minutes)

HMRC has published a bulletin covering important information on a range of issues to be aware of should the UK leave the EU without a deal. This includes guidance on National Insurance Contributions (NICs) for UK and EU workers if the UK exits the EU without a deal.

UK employers with UK or Irish employees working in Ireland

Under the agreement with Ireland that was signed in February 2019, the NICs position of these employees will not change.

UK employers with employees working in the EU, European Economic Area or Switzerland, and UK self-employed people working in these countries

The current NICs arrangements will continue to apply until the end date stated on the employee's or self-employed person's UK-issued form A1/E101. The employer or self-employed person is required to contact the relevant EU social security institution to confirm the position in relation to foreign social security.

EU employers that send workers to the UK

The employees may not be required to pay NICs if specific conditions are met. These conditions have not yet been published.

EU citizens working in the UK

These taxpayers may not be required to pay NICs if they are employed mainly in EU countries and only carry out limited work in the UK. Specific conditions will apply, which have not yet been published.

https://www.gov.uk/government/publications/employer-bulletin-eu-exit-edition

Adapted from Tax Journal (12 April 2019)

Capital Taxes

PPR relief restrictions (Lecture P1133 – 10.15 minutes)

Principal private residence relief ensures that gains on main residences are kept outside the scope of CGT. However, there are also ancillary reliefs that extend this important exemption to people who are not in constant occupation of their main residence. For example, when someone is absent from their main residence for any reason, the gains which they make for up to three years are protected. Other reliefs cover gains when people work away from their main residence and gains made when living in employer-provided accommodation.

In order better to focus principal private residence relief on owner-occupiers, the Government intend, from 6 April 2020, to restrict two of these ancillary reliefs which are felt to be overgenerous. The reliefs affected are:

1. lettings relief; and

2. the final period exemption.

By delaying these changes until April 2020 (and the relevant legislation will therefore be included in the next Finance Bill), HM Treasury say:

> 'This timetable will give people sufficient time to rearrange their affairs (i.e.. by selling their property) under the current rules, should they wish to do so.'

Lettings relief

At present, lettings relief provides up to £40,000 of relief (and £80,000 for a couple) to those who let out all or part of their home if it is, or has been at any time in the past, their main residence. Thus individuals can claim this relief on a property even if they have not occupied it as a residence for a lengthy period.

With effect from 6 April 2020, this relief is going to change and will only be available to those who are in shared occupancy with their tenant. The old rules will of course apply up to and including 5 April 2020.

Final period exemption

The final period exemption currently means that people do not have to pay CGT on gains made in the final 18 months of their ownership, even if they are not owner-occupiers during this period.

However, a long exemption period entails more relief accruing on two properties (i.e.. the unsold one and the new one) simultaneously. This, say HM Treasury, 'is out of line with the intention of the exemption which is meant to protect those who move to a new main residence but are unable to sell their original home immediately'.

The final period exemption is therefore being reduced to nine months for 2020/21 onwards. It is estimated that this is still twice the length of the average property transaction.

The special provisions in S225E TCGA 1992 that give a property owner who is in, or moving into, a care home as a 'long-term resident', and a property owner who is disabled, 36 months of exemption are being retained.

Contributed by Robert Jamieson

PPR on land and carelessness (Lecture P1131 – 16.11 minutes)

Summary – As the advisor had not been given a chance to defend their position as to whether or not they had been careless, the appeal was allowed and the assessments discharged.

In January 2007 Mr and Mrs Ritchie sold a plot of land of about 0.7 hectare on which was the house they had built, together with other buildings. Their tax returns for the year of disposal, which were prepared by their accountant, contained no reference to the sale and reported no chargeable gain.

In March 2013, HMRC raised discovery assessments on Mr and Mrs Ritchie on the basis that the gain which arose on the sale of the land was not wholly exempt under the principal private residence provisions of section 222ff TCGA 1992 as the land exceeded 0.5 hectare.

Mr and Mrs Ritchie appealed to the First Tier Tribunal against the assessments in March 2017. The Tribunal found that a larger part of the gain on the sale of the land was exempted under the PPR provisions than had been allowed by HMRC. The Tribunal agreed with HMRC that the couple's accountant had been careless making the assessments. The Tribunal reduced the chargeable gain significantly, but upheld the making of the assessment.

Mr and Mrs Ritchie argued that the First Tier Tribunal erred in its conclusion because HMRC had raised the issue of the accountant's carelessness too late to allow them time to defend the point. This was an error of law.

Decision

This Upper Tribunal's decision in this case related only to the carelessness issue. HMRC's appeal against the reduced PPR was not heard.

The Upper Tribunal said it had not been clear in HMRC's statement of case and skeleton argument to the First Tier Tribunal that HMRC were intending to argue that the assessment could be justified by the carelessness of the advisor. Consequently, the First Tier Tribunal had erred in law by concluding the issue had been adequately pleaded. The advisor had not been given an opportunity to explain their actions.

The Tribunal said that there was public interest in the correct tax being collected, but it was also important for litigation to be brought to a conclusion. The case had been going on for many years and so the Tribunal thought that it was now too late, and would be unfair, for the question of carelessness to be revived. Mr and Mrs Ritchie's appeal was allowed and the assessments discharged.

HMRC v William and Hazel Ritchie [2019] UKUT 0071 (TCC)

Payment under guarantee (Lecture P1131 – 16.11 minutes)

Summary – Payment of £230,000 to Ulster Bank was an allowable capital loss in 2011/12, the year that the payment was actually made and could not be carried back.

MCE Developments Ltd was a company incorporated in Northern Ireland in February 2007 as a venture between Gerard Eccles, his wife and some others, with the aim of purchasing and developing a site on Belfast Road in Glenavy.

MCE Developments Ltd obtained planning permission, but was unable to proceed due to the slump in property prices. It is also said that the property crash took place in 2008 before development took place and the bank put a hold on the development loan.

The company received an overdraft facility and demand loan of £1.2m from Ulster Bank. The Terms and Conditions applicable to the overdraft and loan included that they were secured by a first legal charge on the development site, as well as "an unconditional guarantee from Gerry and Shirley Eccles, guaranteeing the Borrower's liabilities to the Bank - the sum of £230,000."

On 23 April 2009, £295,700 of personal money was placed into the Eccles' bank account at Ulster Bank. On 1 December 2010, Mr and Mrs Eccles placed £295,700 on deposit with Ulster Bank's Money Desk. This was money received from an insurance claim. The money was moved about within Ulster Bank - between the Eccles' current account, corporate current account and Money Desk deposit, and back again.

In March 2012, Mr Eccles, as guarantor, made a payment to Ulster Bank of £250,000. On 9 March 2012, Ulster Bank asked Mr Eccles to send in a signed letter saying:

> "I authorise you to utilise the funds currently held on deposit by the Ulster Bank as follows:
>
> 1. The amount of £250,000 in full settlement of my personal guarantee on MCE Developments Ltd;"

Mr Eccles treated this as a loss arising from his personal guarantee given to the bank against the original loan to purchase the development site. He claimed relief for loans to traders under s253 TCGA 1992 for 2009/10 and 2010/11.

HMRC disallowed both claims. In their view the capital loss did not arise until that payment was made in March 2012. This fell within 2011/12 and could not be carried back to offset any capital gain liability for earlier years.

The taxpayer believed that the capital loss arose much earlier when the development ceased due to the property crash and so appealed.

Decision

The First-tier Tribunal accepted that Mr Eccles had made the payment under the guarantee satisfying s 253(4)(b) TCGA 1992. This was not disputed by HMRC. The issue was the timing of the payment.

S253 states that an allowable loss accrued to the claimant <u>when the payment was made</u>."

This made it clear to the Tribunal that s253 was in point only when the payment under the guarantee was made. The Tribunal concluded that HMRC was therefore correct that the loss had not arisen until March 2012. Instructions were given to Ulster bank in March 2012 that they could draw the funds held on deposit and use them to clear the £250,000 personal guarantee (which in fact was £230,000) on MCE Developments Ltd. At this time, Mr Eccles clearly had control over the deposited money, because, if he had not, there would have been no need for the Bank to ask him to authorise anything. It was irrelevant that the bank could have called the guarantee sooner.

Mr Eccles' appeal was dismissed.

Gerard Arthur Eccles (TC06978)

Sale of surgeon's business (Lecture P1131 – 16.11 minutes)

Summary – The surgeon had sold his business resulting in a capital gain that was eligible for entrepreneurs' relief.

Richard Villar is a world-renowned orthopaedic surgeon specialising in hip arthroscopic procedures. He sold the 'Richard Villar practice' to Spire Healthcare Diagnostics Limited for £1m. The sale involved the disposal of his right to earn any income from the practice and the transfer of all intellectual property including the database of former patients, website domain name and the business name, all of which belonged to Richard Villar. He agreed that he would not carry out any paid work in the UK as a consultant surgeon, unless through Spire Healthcare Diagnostics Limited, who engaged him on an ad hoc basis through his private services company, Vineyard Press Limited.

Richard Villar argued that he received the £1m payment as consideration for the sale of a business as a going concern and therefore it should be assessed to capital gains tax, with entrepreneurs' relief being available.

HMRC argued that the payment was in fact income in nature, being effectively an advance for services provided and so subject to income tax. Alternatively, if it was capital, it should be treated as income under s773(2) ITA 2007 as it was a payment to exploit a person's earning capacity and to avoid or reduce income tax.

Decision

The First Tier Tribunal stated that Richard Villar did not want to be locked into working for Spire Healthcare Diagnostics Limited. He intended the sale as part of his move towards retirement and planned to change the pattern of his life following it. However, he understood that it was usual for a key individual to remain involved in a business after its sale to ensure a smooth transition and he was prepared to do this in order to secure the sale.

The valuation included amounts for goodwill as well as contracts and records. At the time Richard Villar entered into the arrangements there was a real prospect that he might decide to volunteer in a disaster relief project or pursue his profession abroad and he was under no obligation to work for Spire Healthcare Diagnostics Limited. The Tribunal concluded that the parties had entered into arrangements to sell Richard Villar's business.

As for HMRC’s second argument, this depended on the arrangements being entered into " to exploit the earning capacity of an individual in an occupation", or in this case, meaning the earning capacity of Richard Villar as an orthopaedic surgeon. With no obligation for him to continue to work as an orthopaedic surgeon, it was difficult to conclude that this pre-condition is met. Further, the arrangement was made so that Richard Villar could claim entrepreneurs' relief, but that did not demonstrate a desire to avoid tax.

The appeal was allowed.

Richard Villar v HMRC (TC06983)

Entrepreneurs’ relief and incorporations **(Lecture P1132 – 7.11 minutes)**

When entrepreneurs’ relief came into being in 2008, one of the problems for, say, a sole trader who incorporated his business and then sold his shares shortly afterwards was that he did not qualify for the lower CGT rate, given that he had not held those shares for the requisite 12-month period. A shareholder’s ‘clock’ only started once he had acquired his shares in the newly incorporated company and he was not permitted to take into account any prior period when he was a sole trader. It was, of course, possible to make a disapplication election under S162A TCGA 1992, but this facility only provides entrepreneurs’ relief up to the date of the incorporation, and not beyond.

The alternative approach of selling the goodwill of the sole trader’s business to the new company used to be a possibility, but an entrepreneurs’ relief claim in these circumstances has been denied by S169LA TCGA 1992 since 3 December 2014. It is worth noting that this restriction does not apply to the sale of assets other than goodwill.

For share sales taking place on or after 6 April 2019, a taxpayer can now include in the qualifying entrepreneurs’ relief period of 24 months both the period when he carried on his sole trader business and the post-incorporation period (see new S169I(7ZA) and (7ZB) TCGA 1992 (as inserted by Para 1(2)(d) Sch 16 FA 2019)). It must be stressed that this aggregation rule only applies where the sole trader (or partnership) has incorporated under S162 TCGA 1992. This means that the whole of the assets of the trade (other than cash) must have been transferred as a going concern in return for an issue of shares in the company. In the event of an incorporation that relies on the holdover provisions of S165 TCGA 1992 or where the assets are sold to the company at market value (with the proceeds being left outstanding on loan account), this new aggregation rule cannot be used.

Illustration

Peter has carried on his tax consultancy business as a sole practitioner for several years. On 1 June 2018, he transferred the business and all its assets (including goodwill) to a new company, Peter Tax Consultancy Ltd, wholly in exchange for an issue of shares.

The net asset value of the business transferred to the company (including goodwill valued at £800,000) was £1,030,000. The capital gain arising on the goodwill, which was Peter’s only chargeable asset, was £800,000. This was rolled over under S162 TCGA 1992 against the value of his shares.

On 1 September 2019, Peter sold all his shares in Peter Tax Consultancy Ltd to SHMS plc (a financial services company) for £1,250,000.

Peter had only held his shares for 15 months. However, since he had incorporated his business in consideration for an issue of shares, he is treated as satisfying the 24-month ownership period given that he can add in his time as an unincorporated business.

His gain on the sale of the company will therefore be eligible for entrepreneurs' relief and is computed as follows:

		£	£
Sale proceeds			1,250,000
Less:	Cost (= net value of business)	(1,030,000)	
	Less: S162 TCGA 1992 relief	(800,000)	
			(230,000)
			1,020,000
Less:	Annual CGT exemption		(12,000)
Gain eligible for entrepreneurs' relief			1,008,000

Contributed by Robert Jamieson

Entrepreneurs' relief case studies (Lecture P1134 – 17.03 minutes)

S39 and Sch 16 FA 2019 made several important modifications to the entrepreneurs' relief legislation, of which the most controversial were the new 5% 'economic' tests for shares along with the last-minute alternative qualification introduced on 21 December 2018 (see S169S(3)(c) TCGA 1992). The two case studies below illustrate the operation of the new provisions.

Illustration 1

Family Traders Ltd is a successful owner-managed business that has been operating since the early 1990s. The company has two classes of ordinary share capital: 'A' shares and 'B' shares. These shares rank pari passu for dividend and voting purposes. The dividends declared on each class of share must be passed by a unanimous resolution of the board of directors. However, on a sale of the company or in the event of a winding up, the 'A' shares carry 97.5% of the capital rights and the 'B' shares carry 2.5% of the capital rights.

The company's share capital has been held for many years as follows:

Shareholders	*£1 'A' shares*	*£1 'B' shares*	*Total ordinary shares*	*% ordinary shares/voting rights*	*% capital rights*
Andrew	100	–	100	41.7%	54.2%
Ben	80	–	80	33.3%	43.3%
Colin	–	60	60	25.0%	2.5%
Totals	180	60	240	100.0%	100.0%

All three shareholders would have qualified for entrepreneurs' relief on a disposal under the pre-FA 2019 legislation, since they each held at least 5% of the ordinary share capital and voting rights (and had done so for many years).

However, under the FA 2019 regime, only Andrew and Ben will qualify. Each of them will satisfy the critical three tests:

1. the 5% ordinary share capital test;
2. the 5% voting rights test; and
3. the 5% sale proceeds test (using the alternative 'economic' test).

Unfortunately, Colin does not satisfy either of the 'economic' tests in S169S(3)(c) TCGA 1992, given that he is only entitled to 2.5% of the assets on a winding up or 2.5% of the sale proceeds on a sale of the company. Of course, if the capital rights attaching to his 'B' shares were to be increased to, say, 5%, he would begin to accumulate a qualifying entrepreneurs' relief period.

Illustration 2

HIJ Ltd's issued share capital structure has been unaltered for several years:

Shareholders	*£1 'A' ordinary shares*	*£1 ordinary shares*	*% ordinary shares/voting rights*
Private Equity Capital LLP	2,000,000	–	66.7%
Management shareholders			
Harry	–	400,000	13.3%
Ian	–	375,000	12.5%
James	–	225,000	7.5%
	2,000,000	1,000,000	100.0%

Both classes of share capital rank equally in all respects, except that the level of dividend payable on the 'A' ordinary shares and the ordinary shares must be unanimously agreed by the directors. Furthermore, the 'A' ordinary shares are entitled to the first £3,000,000 received on any sale or winding up of the company.

On 1 June 2019, the shareholders sold the entire share capital of HIJ Ltd to a trade buyer for £15,000,000. After taking the 'A' shareholders' prior entitlement into account, the sale proceeds available for allocation to the individual shareholders would be one-third of £12,000,000 (£15,000,000 – £3,000,000), ie. £4,000,000.

The sale proceeds payable to Harry, Ian and James (and their percentages of the total of £15,000,000) would be as follows:

Individual shareholders	*% of relevant sale proceeds*	*Share of sale proceeds*	*% of full £15,000,000*
Harry	13.3%	£1,600,000	10.7%
Ian	12.5%	£1,500,000	10.0%
James	7.5%	£900,000	6.0%
Totals	33.3%	£4,000,000	

This demonstrates that, throughout the two-year period to 1 June 2019, all the individual shareholders satisfied the minimum 5% of total sale proceeds test (based on the £15,000,000 market value of HIJ Ltd at 1 June 2019).

The requirement to use the market value of the company at the end of the qualifying entrepreneurs' relief period is helpful. For example, if HIJ Ltd had only been worth £7,000,000 two years earlier on 1 June 2017, James' share of that would have been £300,000, ie. 4.3%, and that percentage would have been insufficient to attract the relief.

Contributed by Robert Jamieson

CGT and non-UK residents (Lecture P1135 – 28.35 minutes)

Background

The UK did not tax capital gains generally until 1965 and so, when CGT was first introduced, it represented a significant change and was operated on a relatively narrow basis. Over the years, many of the original idiosyncrasies were ironed out, but one of the most important was retained, namely that the UK did not impose a tax charge on non-UK residents even where the property being disposed of was situated in the UK.

The majority of jurisdictions around the world (including the USA and most of Europe) have always taxed disposals of their own real estate and the fact that the UK did not was therefore something of an oddity, but one that has undoubtedly enhanced the UK real estate sector and made it doubly attractive to overseas investment. In the words of one commentator, 'as international flows of capital have increased over the last 20 years, this advantage has boosted cash flows and investments into the UK and may have had a greater role in the prosperity of the UK than other factors that are more widely appreciated'.

On the other hand, the inflation in UK property prices has clearly been a social downside, certainly as far as the residential sector is concerned, but, from the overseas perspective, one might look at that state of affairs as the largest and most effective tax incentive ever created.

Unfortunately, serious tax incentives are always expensive and so the Government have recently turned their fiscal attention to the real estate industry. They have decided to bring the party to an end on 6 April 2019.

Of course, there were rules for gains on UK residential property held by non-UK residents (other than, essentially, non-close companies) that were introduced in 2015, but that regime did not apply to commercial property and so it did not affect the real estate investment market more widely. In addition, companies, corporate partnerships and certain collective investment schemes, wherever resident, have hitherto been taxed on gains made on the disposal of UK residential property where ATED applies – this is known as the ATED-related CGT charge and is levied at 28%. However, the provisions in FA 2019, which have now come into effect, represent a major change of direction.

What is happening and when?

With effect from 6 April 2019, the Government has widened the capital gains charge to encompass all non-UK residents (with very limited exceptions) and to take in:

- all forms of UK property (ie. commercial as well as residential); together with
- entities such as shares which, directly or indirectly, derive at least 75% of their value from UK property interests.

The new legislation is found in S13 and Sch 1 FA 2019 and runs to over 100 pages. It applies to direct and indirect disposals of UK property interests taking place on or after 6 April 2019, regardless of whether the disposal is by an individual, a company or some other person. The NRCGT regime for the sale of UK residential property has been subsumed into one overall regime covering disposals of all forms of UK property and so has effectively disappeared. The ATED-related CGT charge has been abolished. This whole process has been achieved through a consolidation rewrite of, inter alia, Part 1 of TCGA 1992 which explains the length of Sch 1 FA 2019!

Where the non-UK resident is a company (or some other body which would be within the scope of corporation tax if it were UK-resident), any gain is chargeable to corporation tax. For all other disponors, the charge will be to CGT.

This has simplified the rates of tax which now apply to the sale of UK property interests by non-UK residents:

(i) the standard corporation tax rate (currently 19%) is payable by companies on the disposal of all UK property;

(ii) individuals pay CGT at 18% or 28% (depending on whether they are basic, higher or additional rate taxpayers) on the disposal of UK residential property and at 10% or 20% on the disposal of UK commercial property; and

(iii) trustees' gains are charged to CGT at 28% on UK residential property disposals and at 20% on other UK property disposals.

Rebasing

Para 17 Sch 1 FA 2019 introduces new Sch 4AA TCGA 1992 which deals with the rebasing rules. For disposals which would not have been within the charge to UK tax prior to these legislative changes (eg. the sale of UK commercial property by a non-UK resident), the allowable cost to be set against the property's sale proceeds is taken, for property owned as at 5 April 2019, to be the property's market value on that date.

Where a significant gain is at stake, it will clearly be sensible for taxpayers to procure a full red book valuation (ie. an asset valuation which adheres to the 'red book' of mandatory rules and best practice for professionals as published by the Royal Institution of Chartered Surveyors) as at 5 April 2019.

However, taxpayers will have the facility to elect to use the property's original cost instead of its market value on 5 April 2019, if that would give rise to a loss or to a lower gain than under rebasing.

For disposals by non-UK residents that were previously within the charge to UK tax, the old arrangements will continue to apply so that, for example, 5 April 2015 will still be the rebasing point for disposals covered by the NRCGT regime from the outset. An original cost election is possible. A further refinement is that such a taxpayer can have a straight-line time-apportionment of the gain so that only the proportion of the gain accruing after 5 April 2015 is brought into charge.

Other aspects of the capital gains rules will still be in point, including:

- the offset of losses from other disposals against gains;
- reliefs such as rollover relief and the no gain no loss rules;
- exemptions such as the annual CGT exemption or the substantial shareholding exemption (SSE); and
- existing anti-avoidance legislation.

The new charges will apply to all non-UK residents other than those who are generally exempt from UK taxation such as qualifying overseas pension schemes. Thus, if a foreign pension fund makes a disposal of a UK property investment held for the purposes of the scheme, any gain that results will not normally be charged to tax.

Indirect disposals of UK property

If the tax only applied to direct interests in UK real estate, it would be relatively easy to avoid a charge. One would simply use a company to acquire the property and then, instead of selling the property, it would be the company's shares that were disposed of. In order to prevent this and to ensure that the value of UK property is efficiently taxed, a capital gains charge is to be levied on non-UK residents who dispose of shares in 'property-rich' companies (see Sch 1A TCGA 1992 (as inserted by Para 14 Sch 1 FA 2019)). This move represents a considerable expansion of the UK's capital gains regime.

The charge applies to the disposal of shareholdings – and certain other interests – where at least 75% of the company's gross asset value at the date of disposal is derived, directly or indirectly, from UK real estate. Where the company whose shares are being disposed of itself holds subsidiaries and/or other investments, it will be necessary to drill down to the level of the underlying property assets owned by the group or the company in order to see whether or not the 75% test has been met. Because this rule applies at the point of sale, precise values on the date of disposal may be crucial if the company's UK land holding is hovering around the 75% mark.

It was originally proposed that indirect disposals would be subject to taxation even if the company used the property in question for its trade. However, following representations from interested parties, the Government amended the rules so that gains on the disposal of the company's shares are exempt from the new charge where at least 90% of the property held by the company is used for the purposes of its trade (or was acquired for such use). The trade must have been carried on commercially for at least one year prior to the disposal and it must be expected to continue after the disposal for more than an insignificant period of time. Thus non-UK resident companies owning public houses, care homes, hotels and the like should normally be outside the scope of the charge. This is, of course, subject to the proviso that the property is traded from by the company rather than being let out.

The charge will only apply to persons who held an interest of at least 25% in the company at any time during the two years leading up to the disposal. It should be noted that this 'look-back' period represents a change from the Government's original intentions where a five-year period was mooted. In assessing the percentage owned by the relevant person, interests held by connected parties must – unsurprisingly – be aggregated. However, the definition of 'connected' does not include brothers and sisters or partners in a partnership.

As with direct disposals, rebasing to market value on 5 April 2019 applies to shares held as at that date. There is also an option to use original cost, but, unlike direct disposals, any loss arising from an original cost election will not be an allowable loss.

It should be noted that some indirect disposals may qualify for the SSE. It is possible that 'property-rich' companies which are not regarded as trading in normal circumstances will now be regarded as trading companies for SSE purposes (especially following the relaxations brought in by F(No2)A 2017). In such cases, an indirect disposal can be eligible for the exemption.

Anti-avoidance

Para 11 Sch 1A TCGA 1992 (as inserted by Para 14 Sch 1 FA 2019) sets out two anti-avoidance rules which apply where a person has entered into arrangements, the main purpose of which is to obtain a tax advantage as a result of:

- any provision in Sch 1 FA 2019 applying or not applying; or
- double taxation arrangements having effect where the advantage is contrary to the object and purpose of the double taxation treaty.

The tax advantage is to be counteracted by HMRC making any adjustments which they consider to be 'just and reasonable'.

This provision applies to:

- arrangements entered into on or after 22 November 2017 in a treaty shopping case (it should be noted that some double taxation agreements, eg. the UK – Luxembourg treaty, have hitherto provided protection for the non-UK resident against a UK tax charge); and
- any other arrangements entered into on or after 6 July 2018 which aim to circumvent the legislation in Sch 1 FA 2019.

The 30-day deadline

Finally, by virtue of Para 1(1)(a) Sch 2 FA 2019, the 30-day deadline for submitting returns and making CGT payments on account applies from 6 April 2019 for all non-UK residents who directly or indirectly dispose of UK property. This means that non-UK residents, even if they are registered for self-assessment, must now satisfy the 30-day time limit for payment of the tax. Two points should be emphasised:

1. this new rule takes effect from 6 April 2019, whereas the equivalent provision for UK residents only comes into operation on 6 April 2020; and
2. as far as UK residents are concerned, the legislation in Sch 2 FA 2019 is restricted to gains on residential property, while, for non-UK residents, both residential and commercial property are covered (together with indirect disposals).

Contributed by Robert Jamieson

Administration

Underpayment not coded out

Summary – HMRC's decision not to code out the taxpayer's underpayment of tax was flawed, so the penalties were quashed.

Since leaving school Michael Rich had always been employed and had never been required to self-assess as he had tax deducted through PAYE. This was the third year he had received a penalty for failing to self-assess but on the previous two occasions (2013/14 and 2014/15) and after checking HMRC's online tool he appealed and the appeals were successful and the penalties cancelled.

In July 2016, Michael Rich had already had tax refunded of £1046.29 as confirmed in a P800 received from HMRC. However, later HMRC sent another P800 telling him that they had over refunded his tax, and asked him to repay it voluntarily or be put in self-assessment.

Michael Rich argued that HMRC's website showed that normally an underpayment would collected through the tax code and this is what should have happened. However, HMRC did consider coding out and said that because Mr Rich's estimated employment income for 2016/17 was £11,130 suggesting a tax liability of £24, tax of £241 could not be collected by a coding adjustment.

In March 2017 HMRC issued Mr Rich with a notice to file an income tax return for 2015/16 and later imposed late filing penalties as he submitted this return late. He contacted HMRC and told them he was not self-employed and that his two previous appeals had been upheld. He was told then he would get no further letters, but they came. He was then told that he would have to appeal the fines or he would get more. He appealed.

Decision

The First Tier Tribunal agreed with HMRC that there was no reasonable excuse for failure to file the return on time. However, they said that this was only relevant if the taxpayer was served with a notice to file for the legitimate purpose of establishing the amount chargeable to income tax for the year. The First-tier Tribunal cancelled the penalties on the basis that HMRC had already established by form P800 that he had not underpaid tax so there was no need for the taxpayer to complete a return.

Regulation 14 of the Income Tax (Pay As You Earn) Regulations SI 2003/2682 confirms that coding out is mandatory unless objected to. HMRC's argument for not coding out the tax due was nonsense. A code of 925L would have collected the tax on that year's income and the underpayment.

The Tribunal concluded that a person who was probably earning the minimum wage should be allowed to pay it back by instalments over a year and not all at once with interest and late filing penalties of up to £1,600 for failing to file a return on time.

The taxpayer's appeal was allowed.

Michael Rich v HMRC (TC07001)

Reliance on a third party (Lecture P1131 – 16.11 minutes)

Summary – The taxpayer was forced to change accountants just before the 2011/12 filing deadline. Keeping HMRC informed of what was happening was a reasonable excuse for him submitting his return late.

Mr Coll is a director and shareholder of a company in the restaurant business. He engaged a firm of accountants to do his company’s book-keeping, accounts and various tax returns including Mr Coll's personal income tax return.

The accountancy firm maintained the company's books and prepared the various tax returns (including Mr Coll's personal tax return) for two years without any serious problems. In December 2012 or January 2013 (Mr Coll could not remember the precise date – but it was shortly before the filing date for his 2011/2012 personal tax return), Mr Coll had a meeting with his accountants. It transpired that there were material errors in the accounting records that had been prepared and additional work would need to be done to correct records. In order to prepare his personal tax returns, the company's accounts had to be finalised first.

In early February 2013, Mr Coll appointed Elisabeth Sims (a sole practitioner) to replace his former accountants. It took many calls to the old firm and many months before they would transfer their files to Ms Sims. Once Ms Sims had received the files it took her about a month to reconstruct the company's accounts, and prepare Mr Coll's tax return. His return was eventually filed electronically on 31 July 2013.

Mr Coll had telephoned the HMRC helpline in early February to inform them that his personal tax return would be filed late, and explained why. He made other calls to the helpdesk to keep them informed of progress on the finalisation of his tax return.

HMRC imposed penalties against which Mr Coll appealed, saying he had a reasonable excuse. He believed that he had done everything 'humanely possibly' to address the issue.

Decision

The First-tier Tribunal agreed that Mr Coll had a reasonable excuse. From the evidence presented, he had no reason to suspect there was a problem with his accountants until a meeting just before the filing date. He rectified the situation by appointing a new accountant and kept HMRC informed of his progress..

Mr Coll’s appeal was allowed.

Ian Coll v HMRC (TC06971)

Homeless electrician

Summary – The fact that the taxpayer had mental health issues and was homeless constituted a reasonable excuse for the late filing of his return and special circumstances applied reducing his penalties to nil.

Mr Pokorowski was a self-employed electrician living in a house in London until April 2014. HMRC were aware of this address.

After visiting Poland where his drink in a bar was spiked with drugs, he returned to the UK but lost his job, spent all of his savings and was evicted. Mr Pokorowski was essentially homeless (or living in temporary hostels) throughout the periods that were the subject of this appeal, and for some part of that time, he was sleeping on the street. All of his belongings (including documents) had been lost or stolen.

In April 2015, HMRC issued him a notice to file a 2014/15 return but sent this to his old address that was on file. Mr Pokorowski only found permanent accommodation in around April 2017, and his tax return was filed within three months of that time.

However, HMRC had already imposed late filing penalties. HMRC argued that the notice to file had been sent to Mr Pokorowski's last known address and it was his responsibility to inform HMRC of his change of address. HMRC would not accept that his circumstances were special and there were no grounds for a special reduction.

The taxpayer appealed.

Decision

Whilst the Tribunal had no medical evidence before them, it seemed likely that Mr Pokorowski has (or had) issues with his mental health, and this should have been obvious to the HMRC officers dealing with his affairs.

The Tribunal concluded that being homeless and having to sleep on the street had to be "something out of the ordinary run of events" and particular to Mr Pokorowski and not to taxpayers in general. No HMRC officer acting reasonably could have reached a decision that Mr Pokorowski's circumstances were not "special".

The First-tier Tribunal stated it was a 'scandal' for HMRC to pursue the taxpayer for penalties in these circumstances. It was 'ridiculous' to expect a homeless person to keep the department informed about his address.

The taxpayer's appeal was allowed.

Krzysztof Pokorowski v HMRC (TC06970)

Deadlines

1 May 2019

- CT due for periods ended 31 July 2018 for SMEs not liable to pay by instalments.
- £10 daily penalties apply to late online self-assessment tax returns for the year ended 5 April 2018 to a maximum of £900.

3 May 2019

- Filing date for printed form P46(Car) for quarter ended 5 April 2019.

7 May 2019

- Electronic filing and payment of VAT liability for quarter ended 31 March 2019.

14 May 2019

- Quarterly corporation tax instalment for large companies depending on year end.
- EC sales list for quarter ended 31 March 2019 due (paper form).

19 May 2019

- PAYE/NIC/CIS/student loan repayment due for month ended 5 May 2019.
- File monthly construction industry scheme return.

21 May 2019

- File online monthly EC sales list.
- Submit supplementary Intrastat declarations for April 2019.

22 May 2019

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

31 May 2019

- 2018/19 P60s to employees.
- Accounts to Companies House for private companies with 31 Aug 2018 year end.
- Accounts to Companies House for public companies with a 31 Nov 2018 year end.
- CTSA returns filed by companies with accounting periods ended 31 May 2018.

News

Spotlight 50

HMRC is aware of contractor arrangements being marketed, involving a Personal Service Company (PSC) and a limited liability partnership (LLP) which claims to get around the April 2019 loan charge, by transferring ownership of the shares in the PSC.

These arrangements involve a number of steps:

1. The contractor provides their services to an end user (for example Business ABC) via a PSC in which they are major/sole shareholder. Both the contractor and the PSC become partners of an LLP based offshore;

2. The PSC bills Business ABC for the services the contractor provides. Business ABC pays the money to the PSC who then pays the contractor a salary at or a little over the National Minimum Wage rate;

3. The PSC then transfers the balance of the payment, to the LLP. The PSC tells the contractor how much money they can draw on their capital account with the LLP. Since the contractor has not contributed any capital to the LLP, the amount drawn from their capital account is classed as a loan, for the purposes of the loan charge.

4. The majority of shares in the PSC are then sold to an overseas holding company linked to the scheme promoter, in an attempt to cancel the overdrawn capital accounts. The value of the shares is artificially fixed at an amount that will extinguish the balance of the loan.

Contractors entering into arrangements like these may find that they are tied into further avoidance arrangements for up to 3 years. These arrangements will not result in an effective repayment of outstanding loans and will not reduce or eliminate the amount liable to the loan charge.

These arrangements aim to disguise the use of loans by transferring assets rather than actually making a genuine repayment. They are deliberately designed to try to avoid the loan charge. HMRC's strong view is that these arrangements or similar ones do not work and they will tackle the promoters and users of these arrangements.

www.gov.uk/guidance/disguised-remuneration-asset-transfer-arrangements-set-up-to-avoid-the-loan-charge-spotlight-50

Temporary process for probate applications

The government is proposing to change the current probate fee structure to one based on the value of the estate.

To get probate the person dealing with the estate must first submit an Inheritance Tax account to HMRC and probate registries will not normally accept an application for probate until HMRC has confirmed that it has processed this account.

However, HMRC has stated that until this new structure receives Parliamentary approval, applications for grant of probate will be accepted before the IHT account has been processed and approved. The application must include a note to say that the appropriate Inheritance Tax forms will follow shortly.

www.gov.uk/government/news/proposed-change-to-probate-fees

Money laundering supervision fees

From 1 May 2019, HMRC's money laundering fees are changing:

- The application charge is unchanged at £100;
- The premises registration fee will increase from £130 to £300 per premises;
- The fit and proper persons test fee will increase by £50 to £150;
- The approval process fee remains unchanged at £40;
- The annual renewal fee will increase from £130 to £300 per premises.

Businesses with turnover below £5,000

Businesses with a turnover below £5,000 will be able to apply for a reduced 'small business' fee of £180.

Businesses must apply by contacting HMRC at AMLS.Fees@hmrc.gov.uk with 'Turnover Reduction' in the subject line.

In the body of the email they must include:

- anti money laundering supervision registration number;
- previous year's turnover (if trading for more than 12 months);
- anticipated turnover for a new business.

www.gov.uk/guidance/money-laundering-regulations-registration-fees

Business Taxation

Another presenter wins (Lecture B1131 – 25.15 minutes)

Summary – The presenter of "The Kaye Adams Programme" defeated HMRC when the Tribunal ruled that the hypothetical contract that existed was a contract for services and that no employment relationship existed.

Atholl House Productions Limited is the personal service company (PSC) of Kaye Adams, who performs services for the BBC and other media organisations. She has been a freelance journalist since the mid-1990s. Her work other than for the BBC has included appearances on TV in programmes such as "Loose Women" on ITV and the newspaper review on Sky, together with columns for various newspapers and magazines such as The Daily Mirror, The Sunday People and No 1 magazine. In addition, she has worked extensively in the corporate sector, hosting events and awards evenings and giving presentations. She has a significant social media profile and has written two books in collaboration with her friend and colleague, Nadia Sawalha.

During the two tax years of assessment to which the appeal relates, Kaye Adams presented "The Kaye Adams Programme" on BBC Radio Scotland. She provided her services to the BBC under to two agreements between the BBC and her PSC.

The only issue to decide was whether IR35 applied to the PSC in relation to the two tax years in question as contended by HMRC. As in previous cases, such as the Christina Ackroyd and Lorraine Kelly cases, it was necessary to whether the effective relationship in this case between Kaye Adams and the BBC was a "contract for services" (entered into by a self-employed individual in the course of carrying on business on his or her own account) or a "contract of service" (so an employment contract).

In making their decision, the First Tier Tribunal would need to consider mutuality of obligation, control and other relevant terms of a hypothetical contract.

- Mutuality of obligation: Was there an obligation on the part of the BBC to provide work and an obligation on the part of the Kaye Adams to accept work? Did the hypothetical contract require Kaye Adams to perform the work personally or was a substitute a realistic possibility;
- Control: To what extent did the BBC control how, what, where and when the work which was to be carried out by Kaye Adams was conducted;
- Other terms: Remember, the contract would not be treated as a contract of service if the other terms of the hypothetical contract were inconsistent with that analysis. Case law has identified a number of features that can be said to typify a contract of service. It would be important to consider who provided the equipment needed to fulfil the terms of the agreement, who provided clothing and whether benefits which one would normally associate with ongoing employment, such as holiday and sick pay, maternity leave and an entitlement to a pension were provided.

Decision

Taking into account all of the work that Kaye Adams undertook, the Tribunal stated that the overall impression that they had derived from the evidence before them was that Kaye Adams generally carried on her profession as an independent provider of services and not as an employee. But what about contract?

Mutuality of obligation - The Tribunal agreed with HMRC. If the BBC had decided after entering into the actual agreement that it did not wish Kaye Adams to fulfil the Minimum Commitment set out in the relevant agreement when she was able and willing to do so, then it would still have been obliged to pay the Minimum Fee to her. Additionally, although the contract stated that there was a right of substitution, this right was illusory and no such substitution would happen.

Control - Although each hypothetical contract did give the BBC an element of control over the manner in which she performed her services for them, that control did not extend to the nature of her other engagements or, except to the extent that such content could damage the BBC, the content of such other engagements.

In addition to the fact that the BBC did not have first call on Kaye Adams's time or any control over her other engagements, there were a number of other features of the agreements which were not consistent with the contracts' being employment contracts:

- She had no entitlement to use BBC equipment except when she was in the studio or presenting programmes outside the studio. She used her own laptop and mobile phone when she was not in the studio;

- She had no entitlement under the agreements to holiday or sick pay, maternity leave or a pension entitlement and was treated differently from the BBC's employees when it came to matters such as reviews, changes in job specification and applying for jobs internally within the BBC.

The Tribunal concluded that they considered the whole picture in this case, each hypothetical contract between the BBC and Kaye Adams was a contract for services and did not give rise to a relationship of employer and employee.

The appeal was allowed.

Interestingly the Tribunal went on to explain why they had reached a different decision to that reached by the Tribunal in the Christina Ackroyd case:

1. In Ackroyd, the contract between the BBC and Christina Ackroyd's service company was 7 years' long and it followed a contract which was 5 years' long. In contrast, each contract in this case was for approximately 1 year;

2. The ratio of Christina Ackroyd's non-BBC income to her BBC income was materially different from the comparable ratio in relation to Kaye Adams. Christina Ackroyd's non-BBC income was effectively de minimis. Christina Ackroyd's BBC income amounted to 98% and 96.5%, respectively, of her aggregate gross income.. This is significantly more that Kaye Adams split of closer to 50%;

3. Christina Ackroyd was given a clothing allowance whereas no such allowance was made to Kaye Adams;

4. In Ackroyd the Tribunal found as a fact that the BBC had first call on her time, that she attended BBC training sessions and that she could be told by the BBC whom she was interviewing. None of these features was present in the relationship between the BBC and Kaye Adams; and finally

5. Christina Ackroyd was required to obtain the consent of the BBC for her non-BBC engagements whereas the Tribunal here found as a fact that each actual agreement between the BBC and Kaye Adams did not require her to seek the consent of the BBC before accepting other engagements.

Atholl House Productions Limited v HMRC (TC07088)

NOTE: With two big name cases recently winning their appeals at the First Tier Tribunal (Lorraine Kelly and Kaye Adams), it was interesting to see the report in Accountancy Age (18 April 2019). Just before the end of the 2018/19 year end, a number of freelance BBC presenters have received Regulation 80 determinations demanding PAYE and NIC from their PSC as well as a letter opening an employer compliance review. HMRC is also enquiring into the tax affairs of freelance TV presenters who have worked for other broadcasters.

Accountancy Age reported that David Kirk, who advises a number of TV presenters, has recommended accountants should consider appealing to have the determination overturned, on the grounds that HMRC has not made a discovery that could have led to the reasonable decision that PAYE was underpaid.

Prepare for changes to IR35 rules (Lecture B1131 – 25.15 minutes)

From April 2020 the rules for engaging individuals through personal service companies (PSCs) are changing. The responsibility for determining whether the off-payroll working rules apply will move to the organisation receiving an individual's services.

HMRC has published a four-point list of for how to prepare for the change:

1. Businesses should look at their current workforce (including those engaged through agencies and other intermediaries) to identify those individuals who are supplying their services through PSCs;

2. Use HMRC's 'Check Employment Status for Tax' service to determine if the off-payroll rules apply for any contracts that will extend beyond April 2020;

3. Start talking to contractors about whether the off-payroll rules apply to their role;

4. Put processes in place to determine if the off-payroll rules apply to future engagements. These might include who in the organisation should make a determination and how payments will be made to contractors within the off-payroll rules.

www.gov.uk/guidance/prepare-for-changes-to-the-off-payroll-working-rules-ir35

Business Property Renovation Allowance **(Lecture B1131 – 25.15 minutes)**

Summary – Some of the expenditure incurred in converting a flight-training centre into a hotel that was disallowed by HMRC qualified for BPRA but other amounts did not.

In its 2010/11 tax return London Luton Hotel BPRA Property Fund LLP (LLH) claimed Business Property Renovation Allowance (BPRA) of £12,478,201, the amount paid under a contract with a property developer, for the conversion of a flight-training centre near London Luton Airport into a 124-room hotel. LLH argued that the full amount was eligible as this development sum was negotiated at arms-length and paid entirely for works "on or in connection with the conversion, renovation or repair" of a qualifying building into qualifying business premises.

HMRC's guidance on what qualifies for BPRA states that it includes capital spending incurred when converting a building into business premises, renovating a building that is, or will be, a business premises and repairing business premises.

Spending that qualifies for relief includes:

- building work, for example the cost of labour and materials
- architectural and design services, for example the detailed design of the building and its future layout
- surveying or engineering services, for example services to check the structure of the building or specialist checks for asbestos
- planning applications, for example the costs of getting essential planning permissions to alter a listed building
- statutory fees and statutory permissions, for example the costs of building regulation fees, or getting listed building consent

Spending on acquiring land, extending a building or developing land next to a building does not qualify for relief and neither does most spending on plant and machinery unless it's a qualifying fixture.

HMRC disallowed £5,255,761 of the total on the basis that it was not qualifying expenditure as follows:

- The Interest Amount (£350,000);
- The Capital Account (£2,000,000);
- IFA fees (£372,423.40);
- Promoter fees (£310,000);
- Legal fees (£153,409.89);
- Franchise costs (£272,862);
- Fixtures, Fittings and Equipment and other non-qualifying amounts (£587,556);
- Residual amount/profit (£1,209,510).

Decision

The First Tier Tribunal considered each item in turn.

Interest Amount/License Fee: This payment was necessary to enable the contractors to enter the property for the purposes of carrying out the works, it was a commercial arrangement; and was clearly incurred "in connection with" the conversion of the property.

The Capital Account: This was not considered to be real expenditure and the Tribunal agreed with HMRC that it was designed to inflate the BPRA claim.

IFA and Promoter Fees: The Tribunal allowed these fees, rejecting HMRC's claims that such costs were not capable of being "in connection with" the conversion, renovation of the property.

Legal Fees: The Tribunal stated that most of these fees should be disallowed as they related to the purchase of the property although a small amount may qualify. The exact amount was left to the parties to resolve.

Franchise Costs: £248,000 of this this payment was to remove one of the original hospitality consultants and so did not qualify.

Fixtures, fittings, equipment and other non-qualifying amounts: This included cupboards, headboards, mirrors, reception desk, bar counters, which were all permanently fixed and so allowable.

Other expenditure included tarmacking, landscaping, drainage and mains service connections and a roof top plant room. This expenditure was mostly within the land immediately surrounding the qualifying building and intended to serve the property and so was allowable in full.

Residual amount/profit: Agreeing with HMRC, the Tribunal stated that the profit element should be apportioned over the project cost as whole, including land and concluded that the apportionment be revised to reflect their findings.

London Luton Hotel BPRA Property Fund LLP v HMRC (TC07059)

Non-UK resident companies with UK property (Lecture B1132 – 15.53 minutes)

Ever since the introduction of the special corporate regime in 1965, non-UK resident companies:

- carrying on a UK property business; or
- receiving other UK property income

have been subject – uniquely – to a basic rate income tax charge on their property profits rather than to corporation tax.

However, from 6 April 2020 onwards, these non-UK resident property companies will no longer be charged income tax and will instead be subject to the corporation tax rules (S17 and Sch 5 FA 2019). This measure is designed to harmonise the tax treatment of UK-resident and non-UK resident companies receiving UK property income.

This change will have an impact on all non-UK resident companies that carry on a UK property business directly or through a tax-transparent collective investment vehicle such as a Jersey property unit trust. As a result of the FA 2019 legislation, such companies will need to calculate their profits in accordance with corporation tax principles that will sometimes be significantly different from their current modus operandi.

These notes examine the key differences.

Timing

For affected companies, the changeover will take place at the end of 2019/20, with their income tax property business being deemed to cease on 5 April 2020 and a new corporation tax business beginning one day later.

Where companies do not prepare accounts on a tax year basis, a time-apportionment of income and expenditure will be needed for the period that straddles the commencement date. Profits or losses arising in the period up to 5 April 2020 will be subject to income tax, but thereafter corporation tax rules will apply.

Illustration

Nicholas Properties (Guernsey) Ltd is a non-UK resident company that holds a large portfolio of UK residential rental properties. The company's year-end is 31 March.

For the year ended 31 March 2021, the proportion of the company's income and expenditure that will be subject to income tax is 5/365 and the proportion that will be taxed under the corporation tax regime is 360/365.

Losses

Any pre-6 April 2020 property business losses that the company holds at the changeover date will be grandfathered and carried forward into the new corporation tax business. These losses are classified as 'income tax property losses' and will be available for set-off against the company's post-5 April 2020 UK property business profits, but not against its income from other sources or its capital gains. Nor will income tax property losses be available for surrender as group relief.

Income tax property losses will be offset automatically against the relevant profits of future periods in priority to post-5 April 2020 losses and will never be subject to the 50% corporation tax loss cap. It will not be possible to disclaim them. If the UK property business comes to an end, the losses will lapse.

Losses generated by the company after it comes within the corporation tax regime will of course be subject to the normal corporation tax loss relief rules. In this situation, the 50% loss cap will be in point and post-5 April 2020 losses can be surrendered as group relief.

Finance costs

Financing is the area where many non-UK resident property companies will probably see the biggest difference under the FA 2019 rules. Finance costs and interest will no longer be deductible as an expense in calculating the company's property income. Instead, such items will fall under the loan relationship legislation. Under these provisions, profits and losses from loan relationships are computed separately from any other income that the company may have and are categorised as 'trading' or 'non-trading', depending on the use of the loan finance in question. With property companies, one will normally be looking at 'non-trading' loan relationships.

In recent years, there have been important changes to limit the deductibility of interest for corporation tax purposes – in particular, the corporate interest restriction rules brought in by F(No2)A 2017. These are designed to restrict tax relief for finance costs and interest to a percentage of taxable profits. The rules are extremely complicated and will need to be considered even where no disallowance of interest results, leading to an increased administrative burden for non-UK resident companies. In addition, companies with high levels of debt may find that some of their finance costs are no longer tax-deductible.

Capital allowances

Transitional provisions have been introduced to ensure that the move from income tax to corporation tax is not going to be treated as a disposal event for capital allowances purposes. Balancing adjustments will not be required. Instead, the tax written down values at the end of 2019/20 will simply carry over to the beginning of the first corporation tax accounting period on 6 April 2020.

Management expenses

The Government have confirmed that non-UK resident companies will be able to claim a deduction for management expenses that relate to their property income. In order to be deductible, these costs must be directly linked to the company's UK property business. No deduction will be allowed for costs related to managing non-UK property or subsidiaries.

Administration

Companies affected by the FA 2019 changeover will need to register for corporation tax with HMRC. This is the case even where companies are already registered under the Non-Resident Landlord Scheme.

Taxpayers will have to complete a final self-assessment return in the normal way, reporting the proportion of income arising up to 5 April 2020. A corporation tax return will need to be filed for the period commencing 6 April 2020 and for subsequent accounting periods.

This must be done online using iXBRL and should be accompanied by accounts and tax computations.

The tax payment dates for corporation tax also differ from those with which the non-UK resident property company will be familiar. The due date for companies with taxable profits of up to £1,500,000 falls nine months and one day after the end of the accounting period. Those with higher profits will need to pay their tax in quarterly instalments, two of which are due before the end of the accounting period.

Conclusion

The upcoming changes for non-UK resident companies holding UK property are very significant, with modifications to almost every aspect of how tax is calculated, paid and reported to HMRC.

Contributed by Robert Jamieson

Group relief for property companies (Lecture B1133 – 5.11 minutes)

In order for a valid group relief claim to be made, both the surrendering and the claimant company, in addition to being members of the same 75% group, must be 'UK-related' (see S131 CTA 2010).

The definition of 'UK-related' in S134 CTA 2010 has been amended so that the section now reads:

'For the purposes of Ss131 – 133 CTA 2010, a company is UK-related if:

- it is a UK-resident company; or
- it is a non-UK resident company within the charge to corporation tax.'

The phrase in italics contains the revised wording. It replaces 'carrying on a trade in the UK through a permanent establishment'.

From 6 April 2020, a non-UK resident company is to be subject to corporation tax on the profits of its UK property business and any other UK property income. At present, such companies pay income tax on their UK property profits. This move is primarily intended to bring non-UK resident property companies within the ambit of the corporate tax regimes for loss relief, loan relationships and interest relief restrictions.

As a result of the amendment above, non-UK resident companies carrying on a UK property business will, when they come within the charge to corporation tax, be regarded as a member of a group for group relief purposes. Hitherto, such a company did not qualify for relief, given that it was neither:

- a UK-resident company; nor
- carrying on a trade in the UK through a permanent establishment.

This amendment has effect for the purpose of determining whether a company is a UK-related company at any time on or after 5 July 2016.

Contributed by Robert Jamieson

OECD and the digital economy

In mid-March, the OECD held a two-day public consultation on its proposals that were set out in 'Addressing the tax challenges of the digitalisation of the economy'. The first day looked at nexus and profit allocation that had three proposals in the consultation:

1. User participation;
2. Marketing intangibles;
3. Significant economic presence.

The favourite appeared to be the marketing intangibles proposal where non-routine profits from marketing intangibles would be allocated to the markets involved.

Day two addressed the second part of the consultation which looked to address the risk that still exists of profit shifting to entities in low taxation jurisdictions.

The OECD has said that it will consider the representations made and will plan to have a finalised plan for the G20 meeting in June 2019.

http://www.oecd.org/tax/beps/public-consultation-tax-challenges-of-digitalisation-13-14-march-2019.htm

Capping payable tax credit for R&D tax relief **(Lecture B1131 – 25.15 minutes)**

R&D tax relief allows SME's with a trading loss that has incurred qualifying R&D expenditure to surrender all or part of the loss for a tax credit of 14.5%. HMRC identified schemes that allowed companies to claim this tax credit where there was no R&D activity or employment in the company.

Budget 2018 therefore proposed capping the relief available to three times the company's total PAYE and NICs liability for that year, this is PAYE and NICs for all staff not just R&D staff and includes both employee and employer NICs. The proposal is that the cap will come into force from April 2020.

There was a previous cap on SME R&D tax credit that was the amount of its PAYE and NICs liability for the period which was abolished from 1 April 2012.

The consultation is looking at the following options to ease administration and ensure genuine R&D companies with low PAYE and NICs liabilities are not adversely affected:

- the cap would only apply above a certain threshold;
- allowing the cap limit to take into account other group or connected companies' PAYE and NICs liabilities if R&D has been subcontracted to them or they provide externally provided workers;
- companies being able to carry forward any losses which cannot be surrendered because of the cap and then surrender the losses for a tax credit in subsequent years if the PAYE and NICs liabilities in those future years allows them to.

Example of how cap could work

Loss-making company A makes spends £100,000 on R&D in 2025, SME R&D relief is 130% x £100,000 = £130,000. The company surrenders £230,000 losses for a payable tax credit of £33,350 (14.5% x £230,000). In 2025, company's A PAYE and NICs liability is £40,000.

Under the cap the maximum tax credit would be £120,000 (3 x £40,000) and therefore company A could claim the tax credit in full.

If company A only has £3,000 PAYE and NICs liability, then the cap would be £9,000. Taking the situation where the rules introduced a threshold of £10,000 above which the cap applies, then company A could make a claim at threshold level and would receive £10,000 of tax credit.

This is the equivalent to £68,965 of losses (£10,000 / 14.5%) so the remaining £161,035 (£230,000 - £68,965) of losses could be carried forward. It may be possible for the company to surrender some of these losses in 2026 for an R&D tax credit.

https://www.gov.uk/government/consultations/preventing-abuse-of-the-rd-tax-relief-for-smes

Contributed by Joanne Houghton

CFC Finance exemption and EC commission state aid investigation

In October 2017, the European Commission commenced a State aid investigation into the UK CFC regime finance company exemption, which was introduced in January 2013 and continued until it was amended by FA 2019, s 20 to comply with the EU anti-tax avoidance directive with effect from 1 January 2019.

In summary the finance company exemption allows a CFC to make a claim for exemption of certain intra-group non-trading finance profits that would otherwise pass through the CFC charge gateway because they are non-trading finance profits which meet the qualifying conditions. In order to make this claim the profits must arise from qualifying loan relationships and the business premises condition at TIOPA 2010, s 371DG must also be met.

The Commission concluded the scheme was partly justified. When financing income from a foreign group company, channelled through an offshore subsidiary, is financed with UK connected capital and there are no UK activities involved in generating the finance profits, the UK CFC group financing exemption is justified because it is a proxy rule that avoids complex and disproportionately burdensome intra-group tracing exercises that would be required to assess the exact percentage of profits funded with UK assets and, therefore, does not constitute State aid.

But when financing income from a foreign group company, channelled through an offshore subsidiary, derives from UK activities, the UK CFC group financing exemption is not justified and constitutes State aid because a proxy rule is not needed where the exercise required to assess to what extent the financing income of a company derives from UK activities is not particularly burdensome or complex.

The Commission expects the UK to recover the tax from companies who benefitted from the illegal State aid provided by the UK CFC group financing exemption where it applied because the companies met the UK activities test.

http://europa.eu/rapid/press-release_IP-19-1948_en.htm

Restriction on intra-group transfers

At all material times, the UK taxpayer was a UK-resident subsidiary of a major multinational group whose ultimate parent company was Japanese. The transactions in the case were a transfer of shares in a wholly-owned non-UK company, and a much more valuable transfer of brands, by the UK taxpayer to two non-UK-resident affiliated companies, neither of which had a UK 'permanent establishment' and so both transferees were outside the UK tax net. The shares were transferred to a Dutch-resident company ('Dutchco') which was an indirect intermediate parent company of the UK taxpayer. That Dutch company was also the intermediate direct parent company of a Swiss-resident company ('Swissco') to which the brands were transferred. The brands were then licensed back by Swissco to its sister subsidiary, the UK taxpayer. It was agreed by the parties that none of these transactions were motivated by UK tax avoidance (in particular, the brand transfer). The discussion centred on whether the relevant UK tax rules were consistent with the EU freedoms of establishment and capital movement.

The taxpayer argued that in relation to both transfers, it was entitled to defer payment of UK tax on gains in respect of the shares and the brands. The disposals had taken place between companies which were members of a group both for the purposes of corporation tax on capital gains and for the purposes of the rules regarding intangible fixed assets. In each case, the transferee being outside the UK corporation tax charge would ordinarily mean that the disposal would trigger an immediate tax charge by reference to the open market value of the shares or brands. However, the taxpayer argued that such an upfront tax change would be a disproportionate restriction of either the EU freedom to establish in the UK or the EU free movement of capital. At a minimum, the taxpayer was entitled to defer this upfront tax charge until the transferee disposed of the relevant assets, relying on the extensive EU case law regarding 'exit taxes'. HMRC argued that the upfront tax charge was correct.

In relation to the disposal of the shares to Dutchco there would have been a taxable disposal if the judge had felt able, under EU law principles of conforming interpretation, to allow payment of the UK tax on a deferred basis. With reluctance, the judge felt unable to do so and instead felt compelled to disapply entirely the condition that an intra-group disposal can only be corporation tax-neutral if the transferee is itself subject to UK corporation tax. The result was that the disposal of shares to a non-UK-resident EU parent company was entirely free of UK tax, even though the taxpayer recognised that this disposal should be fully taxable in the UK, but on a deferred basis. The decision is likely to be appealed especially as the UK taxpayer accepted the UK's right to tax the gain on the shares and was only challenging that the chare should be deferred.

For the Swiss disposal of brands which was outside the EU, the judge ruled that the Dutch parent company and the UK-resident subsidiary could not invoke either freedom of establishment or free movement of capital in order to benefit from the UK rules neutralising a tax charge on an intra-group transfer of intangible fixed assets. If Dutchco had been a UK-resident holding company, the UK grouping rules would have applied in exactly the same way when the UK taxpayer transferred the brands to Swissco.

For that reason, the FTT concluded that Dutchco's freedom of establishment was not restricted in the first place. This part of the decision is also likely to be appealed. Even if that appeal is successful, the ultimate outcome will turn on whether the judge's view on disapplying the UK intra-group transfer legislation is successfully challenged on appeal.

Gallaher Limited v HMRC [2019] UKFTT 207 (TC)

Contributed by Joanne Houghton

Deductions for share options

Smith and Williamson Corporate Services Ltd and NCL Investments Ltd (the taxpayers) were both companies within the Smith & Williamson Holdings Limited (SWHL) group and their business was to employ the staff within the group and recharge staff costs around group companies. The SWHL group operated a share options scheme for employees through an employee benefit trust (EBT). For the accounting periods under review the EBT granted significant numbers of share options that were never exercised because they lapsed, or they were out of the money at the date of possible exercise.

Both companies accounted for the share options under IFRS 2. This meant that they recognised a debit to profit and loss for the services received from their employees in exchange for the options granted to such employees. The corresponding credit was a capital contribution in equity, but this was then immediately offset by an equal debit reflecting the fact that the contribution was repaid through recharges to group companies. This opposite entry to this debit to equity was a debit to intercompany balances.

The taxpayers claimed deductions for the debits to profit and loss for the share options. The FTT had upheld this claim and HMRC had appealed on four points:

1. The debits were not expenses incurred wholly and exclusively for the taxpayers' trades;

2. The debits were capital items;

3. The deductions were barred by CTA 2009, s 1038 which restricts expenses associated with the grant of a share option unless and until that option is actually exercised; and

4. The deductions were barred by CTA 2009, s 1290 in respect of employee benefit contributions.

The UT found that the debits in respect of the share options were validly recognised under IFRS 2 and it did not matter that the taxpayers had not parted with any money in respect of the expense within the profit and loss. They also agreed with the FTT's conclusions that the grant of a share option to the employees was part of their remuneration package and therefore part of the trade of the taxpayers.

Although the accounting entries for the share options created a capital contribution, that does not determine whether the amounts are capital. Here again the UT agreed with the FTT that the nature of the transactions was revenue and not capital.

It was also held that CTA 2009, s 1038 would not disallow the deduction as the question as to whether CTA 2009 s 1038 applies so as to deny corporation tax relief has to be answered at the point in time at which those debits are claimed. The UT held that the debits were claimed when the options were granted, and at that point all the requirements of CTA 2009 s 1038 were not satisfied. As CTA 2009, s 1038 corporation tax relief is not 'available' at that point, exclusion of other reliefs was also not operative. When the options are granted, there is no certainty that statutory relief is or will become available.

The UT noted that the appeal did not rest on what would happen had the options been exercised at a future point and what relief would have been due then or even what removal of relief previously given might take place, so this point remains unanswered.

Lastly, the UT also upheld the FTT conclusion which rejected the claim that the grant of options to employees involved the making of an 'employee benefit contribution' under CTA 2009, s 1290. The UT also noted that even though the corporation tax deduction was not matched by a charge to income tax on the employee this did not mean a deduction should be denied to the taxpayers.

The rules on employee share options deductions have been amended by FA 2013, s 40 which introduced CTA 2009, s 1038A. For accounting periods ending on or after 20 March 2013, no corporation tax deduction is available in relation to an employee share option unless shares are acquired pursuant to that option. In addition, except in specified circumstances, no other corporate tax deductions should be made in cases where statutory relief is available. However, the case may be relevant for claims before this accounting date.

HM Revenue and Customs v NCL Investments Ltd & Smith and Williamson Corporate Services Ltd [2019] UKUT 0111 (TCC)

Contributed by Jonanne Houghton

VAT

Taxi firm: Agent or principal? (Lecture B1131 – 25.15 minutes)

Summary – The taxpayer acted as principal when supplying drivers for local authority jobs, meaning that he should have been registered for VAT.

Bryn Williams operated a taxi business. Two types of driver undertook work for Mr Williams' business: owner-drivers who owned and maintained their own cars, and drivers who used cars that Mr Williams owned and maintained.

Owner-drivers were credited with 90% of the tender price for the appropriate job. The remaining value was the management fee due to Mr Williams for the service that he provided. Drivers who used cars provided by Mr Williams were credited at a lower rate in order to reflect a cost of vehicle rental.

As part of the business Mr Williams provided taxis under contracts with local authorities and government departments. In the event that nominated drivers were unable to complete the agreed service then the work would be offered to other drivers in the pool. If there were no alternative drivers available, the work would be passed to other businesses, which could result in a charge that was greater than the tender price for the job, resulting in a penalty to the nominated driver that would be deducted from future payments.

Mr Williams believed that he was acting as agent and so his only taxable supplies were the management fees that he received of between 10% and 40% of the monies received from the local authorities. He was not registered for VAT on the basis that he considered his taxable sales were less than the registration threshold.

HMRC considered that Mr Williams was acting as principal and created a backdated registration to 1 March 2009. They argued that Mr Williams negotiated the authority contracts, the cars carried his business logo; he received the money from the customers and paid the drivers.

Decision

The Tribunal concluded that Mr Williams was making a taxable supply to the local authority in return for the gross amounts received from them. The contractual and commercial facts supported that conclusion. The local authority did not know who would be carrying out the job. There was thus no particular person who at that time could be said to be the principal for whom Mr Williams was acting and who was bound by his actions. The First Tier Tribunal concluded that the commercial reality was that Mr Williams was responsible for providing the rides to the local authority account customers, and not the drivers.

There was no partnership between the drivers and Mr Williams. Although there was some sharing of risk in relation to non payment, the contracts between the drivers and Mr Williams did not disclose a sharing of profits between them or sufficient intention to be in business in common.

The appeal was dismissed.

Bryn Williams v HMRC (TC06963)

VAT groups and bought-in services

When a UK VAT group acquires certain services through an overseas establishment of a member of the same group, the UK group is subject to a reverse charge on the value of the whole supply. This amount may be reduced to a sum equal to the value of the 'bought-in' services used in onward supplies to members of the UK group.

As announced at Budget 2018, HMRC has revised its guidance for VAT groups to clarify which overseas services can be classified as 'bought-in' services, to ensure that such services are subject to UK VAT.

The revised version of VAT Notice 700/2 defines bought-in services as those:

- that would be taxable in the UK if made to a business belonging in the UK;
- received by the overseas establishment of a VAT group member; and
- subsequently used to make a supply to the UK establishment of another member of the VAT group.

Examples of such services are:

- agency staff and other contract staff (unless on secondment);
- telecoms;
- legal and professional services;
- software and other IT costs;
- consultancy services; and
- advertising and marketing services.

Costs for wages and remuneration of the overseas establishment's own directly employed staff would not be bought-in services.

Revised Notice 700/2 now sets a limit of £7,500 below which HMRC will ignore the charge as 'trifling', in line with the current partial exemption de minimis limit.

The notice also contains a new section on the implications for UK VAT groups of the judgment in Skandia America Corporation [2015] STC 1163, where supplies will become taxable if made from an overseas establishment that is part of a VAT group in a member state operating 'establishment only' grouping provisions similar to those in Sweden.

The changes in FA 2019 Sch 18 to widen the eligibility criteria for VAT grouping will be added to the notice at a later date, once they have been brought into force. These changes will allow non-corporate entities to join a VAT group, such as individuals and partnerships who meet a control test, following the judgment in Larentia + Minerva and Marenave [2015] STC 2101.

Adapted from Tax Journal (22 March 2019)

Legal fees re breach of his fiduciary duties

Summary - The Court of Appeal found that the company was entitled to reclaim input tax on legal fees incurred in defending its director but invoiced to the director, not his new company.

Mr Ranson had been an employee of Customer Systems plc (an information technology consultancy company). In 2009 Mr Ranson resigned to set up Praesto Consulting UK Ltd in competition with Customer Systems plc. Three other employees of Customer Systems plc left to become employees.

Customer Systems plc issued proceedings against Mr Ranson and the other employees, but not against Praesto. It was alleged that Mr Ranson had breached “his terms of employment and/or fiduciary duties in setting up Praesto and competing with Customer Systems plc through Praesto. Further claims were made alleging misuse of a contact list. Customer Systems plc claimed damages by reference to the value of the business lost by Customer Systems plc. This was estimated by reference to work done by Praesto. Alternatively Customer Systems plc sought an account of profits earned by Mr Ranson in breach of his fiduciary duties.

Sintons, Mr Ranson's solicitors, issued nine invoices for their fees in connection with the litigation. There was no mention of Praesto in the description of the work done to support eight of the invoices. Mr Ranson had a discussion with his solicitors sometime before January 2011 about whether the invoices should be addressed to Praesto as well and was told that the invoices should match the title of the proceedings. Praesto settled the invoices.

HMRC issued a notice of assessment to recover the input tax credit of £79,932 claimed by Praesto Consulting UK Ltd in relation to the VAT paid on the eight invoices in issue. HMRC argued that the invoices were addressed to Mr Ranson, they related to services provided in relation to the claim brought by Customer Systems plc against him, and Praesto Consulting UK Ltd was never joined as a party to the proceedings.

Decision

Although addressed only to Mr Ranson, the Court concluded that Praesto Consulting UK Ltd and Mr Ranson had jointly retained the solicitors, making them jointly liable for Sintons' fees. It made no difference that the invoices were only addressed to Mr Ranson.

Unusually, Customer Systems plc had brought the claim solely against its previous employee when in reality it was chasing the profits of his new company. In these circumstances, the First Tier Tribunal had been right to focus on 'substance and reality'.

The court concluded that the First Tier Tribunal had been entitled to find that the services supplied by the solicitor had a direct and immediate link to Praesto Consulting UK Ltd taxable activities. Praesto Consulting UK Ltd had a direct interest in Customer Systems plc’s claim being dismissed, otherwise there was a real risk it would have to account for the profits it had made in competition with Customer Systems plc.

The appeal was allowed

Praesto Consulting UK Limited v HMRC

See Neil Warren’s article below

Input tax on legal fees (Lecture B1134 – 11.16 minutes)

Introduction

There is often a thin dividing line between legal fees that relate to the business, and those which are relevant to an individual director, employee or business owner. For example, legal fees might be incurred to defend an employee in a court case, and there is no doubt that an adverse result could impact on the trading reputation of the business. But as a general principle, input tax cannot usually be claimed on the costs of defending a criminal charge against an employee. To quote from HMRC input tax manual VIT13600: "Every case is unique and HMRC will need to think about all the details before reaching a conclusion."

Tribunal success for taxpayer

A well-quoted historical case that went in favour of the taxpayer many years ago related to P&O European Ferries (Dover) Ltd (VTD7846) where the tribunal ruled that input tax could be claimed when the company paid the legal costs of defending a charge of manslaughter against itself and seven employees following the Zeebrugge disaster: "The conviction of any of the employees would have caused severe damage to the public perception of the company's business".

But to balance the books, many other cases have been won by HMRC. Needless to say, HMRC tend to be quite strict in their interpretation of the 'business purpose' test which is crucial to any input tax claim. In reality, past case law has often given unpredictable outcomes.

Praesto Consulting Ltd [2019] EWCA Civ 353 (See case summary above)

This case has now been heard in three different courts – the hearings considered whether input tax could be claimed by the company on the cost of legal fees to defend its sole director against civil proceedings made against him by his former employer Customer Services Plc (CSP). The main issue in dispute was whether the director had removed confidential information when he left CPS and used this to the commercial advantage of his new company. The invoices for the lawyer fees in question were made out to the director personally and also at his home address. Could input tax be claimed by Praesto? As we have seen in the case summary above, the answer was yes.

The legislation and decision

When you have an input tax challenge, the relevant legislation to consider is VATA1994, s24(1) – and the need for expenditure to be for 'the purpose of any business' and only relevant to 'the supply to him of any goods or services' (author underlining – 'to him' being the VAT registered business).

The lawyers had to be supplying services to the company and not the individual director and the expenditure also had to be linked to Praesto's business activities. The FTT decided this was the case and allowed the appeal but the UT disagreed. And although the Court of Appeal ruled in favour of the taxpayer (round 3 so to speak), the margin of victory was 2-1, with one of the judges dissenting because the invoices were made out to the director personally. The other two judges agreed that Praesto had a direct interest in preventing CPS's claim and the legal services therefore related to its taxable services and input tax could be claimed.

Learning points – a balanced approach

Here are three tips about deciding the business/private use issue regarding input tax on legal fees:

1. Fully consider the implications on the business if the court decision goes against the business: will this either reduce or threaten to reduce taxable sales in the future? Will it have such an adverse effect on the company's reputation that its potential business development will be affected?
2. Make a note on purchase invoices as to why the lawyer's letter of engagement is with the individual employee rather than the business. And confirm that all legal fees were paid for by the company rather than the individual director.
3. Review the landmark case considered above that went in favour of the taxpayer many years ago involving P&O European Ferries (Dover) Ltd (VTD7846) and see if there are parallels with your own situation.

Hotel bills

An example of an expense where there is no problem with the invoice being made out to the employee rather than the business relates to hotel accommodation. HMRC accepts that the supply is still relevant to the company, as long as it pays the bill and the overnight stay related to taxable business being carried out by the employee. See HMRC Input tax manual VIT13400

Contributed by Neil Warren

Revoking option to tax elections (Lecture B1135 – 11.33 minutes)

Background

The option to tax rules were introduced on 1 August 1989, so will celebrate their 30th birthday this year. The regulations mean that when a VAT registered business or organisation elects to tax land or a building with HMRC, all income from that site becomes subject to 20% VAT, with certain overrides such as income from residential property. Once an election is made, it cannot be revoked for 20 years in most cases. But as well as the 20-year rule, there are two other times when an election can be or is revoked, relevant to 6-months and 6 years since the option date.

The 6-month rule

If a taxpayer meets five conditions (and this is an 'and' situation rather than 'or' so all five must be met) then it can automatically revoke its option:

Condition 1 – the time period between the day that the option took effect and the date that the taxpayer decides to revoke it is less than 6 months.

Condition 2 – the taxpayer must not have made a taxable supply of the opted building that has resulted in a charge of VAT. I recently dealt with a situation where a building purchased by a taxpayer consisted of a ground floor shop and first floor flat. A tenant had been found for the flat but not the shop at the time the client wanted to revoke his option. This was fine because the rental income from the flat was not taxable.

Condition 3 – no transfer of a going concern has occurred.

Condition 4 – the taxpayer must notify HMRC on form VAT1614C.

Condition 5 – this is the most complicated condition and relates to input tax. HMRC obviously wants to avoid the situation where a taxpayer can claim input tax on a lot of property related expenses and then revoke his election a few days later. The taxpayer must meet one of three input tax sub-conditions:

The taxpayer (or any associated business) has not recovered any input tax as a result of opting to tax the land or building in question.

The taxpayer has deducted input tax but will repay it either as part of their partial exemption annual adjustment calculation or under the clawback rules – see Example 1 below.

The taxpayer has deducted input tax and this relates exclusively to one capital item and amounts to less than 20% of the input tax claimed on the capital item.

Note – if a taxpayer meets all of conditions 1 to 4 but cannot meet any of the additional sub-conditions 1 to 3, he may ask HMRC for permission to revoke the option but HMRC might impose conditions before granting any such request (HMRC Notice 742A, para 8.1.5).

Example 1

Mary is VAT registered and purchased the freehold of a vacant office block for £200,000 on 1 January 2019 – the seller had not opted to tax the building so did not charge VAT. Mary's intention was to refurbish the building by spending £100,000 plus VAT and renting it out to a firm of solicitors, so she opted to tax the building in order to claim input tax. However, before she could appoint any builders, an insurance company offered to rent the building in its current condition from April 2019 and did not want to pay VAT on the rent because it is partially exempt.

In this situation, it is likely that Mary would have claimed input tax on conveyancing fees when she purchased the property because it related to her intended taxable supplies. But this input tax will be repaid to HMRC under the clawback rules because her intended taxable supplies have been replaced by actual exempt supplies when she revokes her election. She has therefore met sub-condition 2 of condition 5. She also meets the other main conditions 1 to 4.

The 6-year rule

Imagine that Mary bought a retail unit in July 2006 for £300,000 plus VAT and opted to tax her interest in the building. She rented it out for five years to a tenant (plus VAT) and then sold the building in July 2011 (also charging VAT). It is now July 2018 and Mary has the chance to repurchase the property at a discounted price. What is the position with her option to tax election?

Once a taxpayer has had no interest in a property for six years, their option to tax election with HMRC is automatically revoked. If the period is less than six years, then the original election remains in place. This means that Mary has two choices when she buys the property in July 2018:

She could make a new election with HMRC if there is an input tax motive e.g. she might want to improve the property or add an extension and claim input tax on builder costs and materials. The new election would remain in place until at least 2038 i.e. a new 20 year time period begins.

She could decide not to make an election and therefore all income she earns from the property will be exempt from VAT.

Note – the 6-year rule is subject to three anti-avoidance provisions, which should not be relevant in most situations – see HMRC Notice 742A, para 8.2.2.

The 20-year rule

Until 1 August 2009, this rule was irrelevant i.e. because no options before this date could have exceeded 20 years. But nearly 10 years have now passed, meaning that more and more elections can be revoked. The most important tip on the 20-year rule is that it is equally important for buyers and tenants to be aware of its opportunities as it is for sellers and landlords.

Example 2

Martin is a sole trader dentist and wants to buy a freehold property for £750,000. However, the seller has opted to tax the building so wants to add 20% VAT. Martin should ask the seller if he opted to tax the property more than 20 years ago because his business as a dentist is partly exempt so a VAT charge will leave him irrecoverable input tax. If the answer is 'no' i.e. the sale is subject to VAT, then Martin is best advised to seek alternative premises where the seller has not made an election.

Procedures with the 20-year rule

An election is revoked when the taxpayer completes form VAT1614J and submits it to HMRC. The revocation is automatic as long as four conditions are met:

The 20-year condition – the taxpayer must have held an interest in the property more than 20 years ago and opted to tax it more than 20 years ago as well.

The capital item condition – the capital goods scheme applies to any property costing more than £250,000 excluding VAT or any improvement, refurbishment or extension to the property exceeding this amount. The scheme requires annual adjustments to be made over a ten-year period. If a property is still subject to these adjustments, the capital item condition is not met.

The valuation condition – this condition will not be met if any of the taxable supplies in the previous ten years have been made either below market value or have been made at market value but it is expected that exempt supplies after revocation will be significantly greater than the earlier taxable supplies.

The prepayments condition – this condition is best illustrated by an example.

Example 3

Jim owns an office building which he rents out to betting shops and charges VAT on the rent. He can now revoke his option under the 20-year rule but just before revoking his option, he pays a cleaning company £30,000 plus VAT for the next five years' cleaning services. This advance payment for services means that Jim has breached the 'prepayments condition' because it relates to services beyond the next 12 months. He will need to seek HMRC's permission to reverse his election i.e. it is no longer automatic.

Reference: HMRC Notice 741A, para 8.3.3

Summary

Once an election has been revoked under any of these three rules i.e. 6-months, 6-years or 20-years, then all future supplies made by the property owner will be exempt from VAT rather than standard rated. This means that a business which is only VAT registered because it owns an opted property will need to deregister once the revocation takes effect, assuming it has no intention to make taxable supplies in the future e.g. with a new business venture or another property purchase.

Contributed by Neil Warren

Training across Europe – place of supply (Lecture B1131 – 25.15 minutes)

Summary - the CJEU found that seminars provided by a Swedish company in various member states were taxable in each of these member states.

Srf was a Swedish company that provided 5-day accounting and management courses. These courses were run for taxable persons whose businesses were established or who had a fixed establishment in Sweden. Most of the courses took place in Sweden but the issue concerned a number of courses that were run in other member states.

Srf argued that the seminars took place in the member states and so were taxable there.

The Swedish tax authorities considered that the seminars provided outside Sweden were taxable in Sweden arguing that the seminars did not fall under Directive 2006/112 art 53 where the place of supply of services in respect of admission to cultural, artistic, sporting, scientific, educational, entertainment or similar events is the place 'where the events actually take place'.

Decision

The CJEU concluded that art 53 related to services that granted of the right of admission to an event in exchange for a ticket or payment. The fact that registration and payment took place in advance of the seminars was irrelevant. The purpose of the directive was to tax services at the place of consumption.

Seminars in member states other than Sweden were therefore taxable in those member states. It did not matter that Srf would suffer an increased administrative burden as a result of having to account for VAT in several jurisdictions.

Skatteverket v Srf konsulterna AB (Case C-647/17)

Tax Journal 22 March 2019

R&C Brief 2/2019: Import VAT deducted as input tax by non-owners

This brief highlights two instances in which import VAT is recovered incorrectly as input tax by taxable persons who are not the owners of relevant goods, and sets out the correct treatment to be applied in all cases.

From 15 July 2019, HMRC will only allow claims for input tax deduction made using the correct procedures. HMRC accepts that as previous guidance was not clear on the correct procedure, where businesses in these situations have been acting in good faith, HMRC will not seek to correct input VAT deductions made in error before 15 July 2019.

Toll operators

Toll operators import goods (for example pharmaceutical goods), process and distribute them within the UK for clinical trials.

They do not take ownership of the goods and do not resell them but rather distribute the goods onwards at the instruction of the owner (their customer). The only supply by the toll operator is of its services to its client (the owner of the imported goods).

Title to the goods at all times remains with their overseas customers (the owners). However, the toll operator acts as 'importer of record' on UK import declarations, pays the import VAT to HMRC and receives the import VAT certificate (C79).

HMRC has become aware that a number of UK toll operators who have paid import VAT on behalf of overseas customers have also claimed a corresponding deduction for input tax. The correct procedure is for the owner to be the importer of record and reclaim the import VAT.

Where title has passed before import into the UK

In some situations, businesses sell on the goods just before importing them into the UK so ownership and title has passed to the new owner, however the business that sold the goods acts as 'importer of record' on UK import declarations, pays the import VAT to HMRC and receives the import VAT certificate (C79).

The correct procedure is for the new owner of the goods to be the importer of record and reclaim the import VAT on the C79 and not the previous owner.

www.gov.uk/government/publications/revenue-and-customs-brief-2-2019-vat-import-vat-deducted-as-input-tax-by-non-owners

VAT/GST collection for online marketplaces

OECD analysis has shown that around two-thirds of all cross-border e-commerce sales are made via online marketplaces.

At a meeting in Melbourne held at the end of March, around 300 participants attending the 'Global Forum on VAT' welcomed the measures proposed by the OECD report on 'The Role of Digital Platforms in the Collection of VAT/GST on Online Sales'. The report proposes that online marketplaces should be liable for the VAT/GST on sales made by traders through their platforms. Other measures include data sharing and enhanced co-operation between tax authorities and online marketplaces.

Enlisting these marketplaces to ensure that VAT/GST is paid by making them liable and through data sharing, would allow tax authorities to focus their compliance efforts on the relatively small number of marketplaces rather than on the millions of small traders operating through them.

www.oecd.org/tax/global-tax-community-welcomes-new-measures-to-enlist-online-marketplaces-in-the-collection-of-vat-gst-in-e-commerce.htm

Adapted from Tolley Guidance

Sale of lift passes and financial extremity

Summary – Following the First Tier Tribunal's decision, the Upper Tribunal concluded that paying £300,000 of the disputed VAT would cause the company financial extremity and reduced the amount to £155,000.

Snow Factor Ltd operated a snow dome. In 2018, the First Tier Tribunal had concluded that standard rated VAT applied to the supply of lift passes by Snow Factor.

HMRC did not require the company to pay the disputed VAT of £294,000 before the first appeal because it accepted this would cause hardship. However, after the First Tier Tribunal's decision, HMRC said the effect of s85A(3) VATA 1994 was that the company should pay the sum due. In November 2018, HMRC wrote to Snow factor Ltd saying the debt was now £484,521 but acknowledged that to pay the whole amount would cause 'financial extremity' (s 85B(4)). It therefore asked for £300,000 to be paid over three instalments.

Snow Factor applied to the Upper Tribunal to have the sum reduced on the basis that this would cause it financial extremity.

Decision

The Upper Tribunal concluded that from the cash flow forecasts and other financial information presented that it would cause the company financial extremity if it had to pay £300,000. The Upper Tribunal decided Snow Factor should pay £155,000, which was more than half of the disputed VAT. The judge was satisfied that Snow Factor could afford to pay this in one instalment.

Snow Factor Ltd v HMRC [2019] UKUT 77

Adapted from Tax Journal 22 March 2019

No Brexit deal: Goods moving between Ireland and Northern Ireland

On 29 March, HMRC updated its collection by adding two new guides relating to goods moving between Ireland and Northern Ireland.

HMRC say:

> "The government is committed to the Belfast (Good Friday) Agreement and to do everything in its power to make sure there is no return to a hard border between Northern Ireland and Ireland.

> Whilst the government's main objective is to secure a deal with the EU, we continue to make responsible preparations for a no deal outcome. As part of these preparations we have been running events with key stakeholders, to help them understand what systems will be in place at the border if there is no deal. We will continue to work with Northern Ireland businesses and traders over the coming weeks, and have published this guidance, as part of our ongoing engagement plans."

VAT when Importing from Ireland to Northern Ireland

If the UK exits the EU without a deal, import VAT will be due on goods moved from Ireland to Northern Ireland, whether to end users there, or moving through on the way to Great Britain.

- VAT-registered traders will need to account for import VAT on their normal VAT returns.
- Traders not registered for VAT will not be required to register or start charging, but must account for VAT from 1 July 2019 onwards on a quarterly import VAT return using a new online service HMRC is in the process of developing.

https://www.gov.uk/guidance/vat-on-goods-you-move-from-ireland-to-northern-ireland-if-the-uk-leaves-the-eu-without-a-deal

Customs processes when moving goods from Ireland to Northern Ireland

Goods crossing the land, air and sea borders between Ireland and Northern Ireland are not currently subject to Customs Duty or customs declarations. This second guide sets out the temporary customs procedures that will apply from exit day until longer-term arrangements are made and will ensure this will not change for most goods.

- Customs declarations will be required for excise goods (alcohol, tobacco and certain oils) and certain specified controlled and licensed goods.
- Current procedures, under which goods crossing land, air and sea borders between Ireland and Northern Ireland are not subject to customs duty or customs declarations, will continue to apply for most other goods.

https://www.gov.uk/guidance/customs-procedures-for-goods-moving-between-ireland-and-northern-ireland-if-the-uk-leaves-the-eu-without-a-deal

Transitional Simplified Procedures extended (Lecture B1131 – 25.15 minutes)

HMRC has announced that it is extending its Transitional Simplified Procedures (See April 2019 notes and the article that follows) making these procedures available at all UK ports and airports if the UK leaves the EU without a deal. Remember, once a business is registered for Transitional Simplified Procedures, it will be able to transport goods from the EU into the UK without having to make full customs declarations at the border or pay import duties straight away.

For most goods imported, traders will be able to delay putting in customs declarations for the first 6 months after EU exit. Businesses will have until 4 October 2019 to submit declarations and pay any import duty for goods imported up to 30 September 2019. After that, customs declarations and payments will need to be made on the fourth working day of the following month.

HMRC is also giving importing businesses until 30 September 2019 to provide a guarantee that is required to cover any customs duties that they wish to defer. This will apply for all importers, not just those who have registered for Transitional Simplified Procedures.

HMRC has published a new guide on how to make import declarations using these transitional simplified procedures, including the extended deadline for submission of supplementary declarations in respect of non-controlled goods until 4 October 2019.

www.gov.uk/government/news/hmrc-outlines-extension-of-transitional-simplified-procedures

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

Declarations using transitional simplified procedures (Lecture B1131 – 25.15 minutes)

Last month we provided you with a summary of how these transitional simplified procedures will work. This month we are providing you with a bit more detail.

Controlled goods procedure

Licensed goods as well as alcohol or tobacco, where additional duties are owed are able to adopt the transitional simplified procedures but the business will either need to appoint a customs agent or buy software to enable them to do the appropriate paperwork.

Before importing the goods to the UK from the EU, a simplified frontier declaration must be submitted. On arrival in the UK, the goods must be accompanied by full supporting documentation and then, before the end of the following working day, the declaration must be updated to show 'arrived' status. A final supplementary declaration must be submitted by the fourth working day of the month following arrival.

Where both standard and controlled goods are imported, this controlled goods procedure can be used for both.

Standard goods procedure

For all other goods, the following information is recorded on the business's commercial records as the first part of their declaration before the goods cross the border:

- unique reference number for the consignment;
- description of the goods and the commodity code;
- quantity imported;
- purchase and (if available) sales invoice numbers;
- customs value;
- delivery details;
- supplier emails;
- serial numbers of any certificates or licenses.

These records are then updated with the date and approximate time the goods arrived in the UK once this happens.

A supplementary declaration must then be made by the fourth working day of the month following the arrival of the goods but submission can be delayed until 4 October to provide time to prepare to make the supplementary declarations. Any VAT due must still be paid on time and monthly Intrastat declarations must still be submitted on time.

In certain circumstances, supplementary declarations can be combined into a single supplementary declaration. This is possible where the following information is the same:

- declaration type (all transitional simplified procedure declarations will be imports);
- deferment account number;
- importer and EORI number;
- representative (there must be one declaration for each representative used);
- delivery terms;
- country of destination is the UK;
- country of dispatch;
- location of goods (this will usually be the delivery address);

Item information can be combined onto a single line within the combined supplementary declaration if the following information about the goods is the same:

- Customs Procedure Code (provided by HMRC);
- Commodity Code;
- description of goods;
- exporter and EORI number (the goods must be from one supplier);
- details used in the calculation of Customs Duty – tax, calculation method, currency;
- item price;
- customs valuation method;
- country of origin;
- supplementary units (type of unit, that is boxes, items, litres).

Acceptance of supplementary declarations

Once HMRC accept a supplementary declaration, the Customs Handling of Import and Export Freight system sends a customs response message giving a calculation of what is owed. HMRC will collect any customs duties and import VAT (if not registered for VAT) on the 15th day of the month that the supplementary declaration is made; excise duties are collected later, on 29th of the same month.

Final supplementary declaration

A final supplementary declaration must be submitted by the fourth working day of the month following each reporting period, declaring the number of supplementary declarations:

- due for that reporting period;
- finalised;
- late from the previous reporting period.

Goods under the Common Transit Convention

The transitional simplified procedures can be used when importing goods from the EU or for goods that have cleared EU customs formalities, under the Common Transit Convention

Using the Customs Transit procedure allows for the temporary suspension of duties and taxes allowing customs clearance formalities to take place at the point of destination rather than at the point of entry into the customs territory. Goods imported under the Common Transit Convention, must be discharged from transit at an office of destination or to an authorised consignee using the existing process.

Simplified declarations can be used to declare EU goods to free circulation at the time of discharging the transit movement. The process followed will depend on whether the goods are subject to the controlled or standard goods procedure.

<u>*Controlled goods*</u>

A simplified frontier declaration must be submitted before the goods leave the office of destination or authorised consignee.

The office of destination or authorised consignee must have the master reference number of the simplified frontier declaration as evidence that the goods have been moved to free circulation.

<u>Standard goods</u>

These goods must be declared by recording them in the businesses commercial records before the time that the goods are to leave the office of destination or authorised consignee.

Arrival time in the UK does not need to be recorded but the records must be updated to include the time that the goods are released to free circulation. This will be the tax point.

The office of destination or authorised consignee must have evidence that the business is registered for the transitional simplified procedures and that the goods have been declared to free circulation. Providing the EORI number provides this evidence.

A supplementary declaration must be submitted by the fourth working day of the month after the goods have been released to free circulation. This can be delayed until 4 October.

If goods are in an inventory-linked temporary storage facility, a customs clearance request will be needed to release the goods. The EORI number will be validated during this process. If goods are in a non-inventory linked facility, local procedures should be followed. Records should be updated with the time that the goods are released from temporary storage. This will be the tax point.

https://www.gov.uk/guidance/making-declarations-using-transitional-simplified-procedures