Tolley®CPD

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Personal tax

More on the Coronavirus Job retention Scheme (P1192 – 16.25 minutes)

HMRC has substantially expanded their original guidance on this scheme that went live on 20 April 2020.

Overview

The scheme has been extended to run until the 30 June 2020, with the Chancellor saying that he will extend it further if necessary.

As reported last month, from 1 March 2020 employers have been able to furlough employees for a minimum of three weeks and apply for a grant covering 80% of regular monthly wage costs, capped at £2,500 a month, plus the associated Employer NICs and minimum automatic enrolment employer pension contributions on that wage. Employers can choose to top up the employee's salary, but they do not have to.

Salary and other employment related costs are deductible as normal in arriving at taxable profits, but the grant received must be included as taxable income.

When employees return to work, they must be taken off furlough. Employees can be furloughed multiple times, but each separate instance must be for a minimum period of 3 consecutive weeks.

Making a claim

On 17th April 2020 HMRC published detailed guidance on the information that employers will need to be able to make their claim and the guidance includes a link to start processing a claim.

While agents can claim on their clients' behalf, that is not the case for 'file only' agents responsible for filing only their clients RTI returns. These agents can assist in gathering the information that is needed, but cannot make the claim.

To make a claim, employers will need:

- their Government Gateway user ID and password;
- their bank details;
- their employer PAYE reference number;
- the number of employees being furloughed and for each employee their:
    - National Insurance number
    - payroll or employee number (optional)
- the start and end date of the claim;
- the total amount being claimed for including employer National Insurance contributions and employer minimum pension contributions;
- their name and phone number as well as their UTR or company registration number

Where the claim is for more than 100 furloughed employees, they will need to upload an accepted file (.xls, xlsx, .csv or .ods) with each employee's:

- full name
- National Insurance number
- payroll number (optional)
- furlough start date
- furlough end date (if known)
- full amount claimed

Once you've claimed, employers should keep a copy of all records and calculations, including the claim reference number for your records

Having checked that a claim is correct, HMRC will pay the claim by BACS within 6 working days.

www.gov.uk/guidance/claim-for-wages-through-the-coronavirus-job-retention-scheme

Employment contracts

Where necessary, employment contracts need to be amended to allow for furloughing and when deciding who to furlough, equality and discrimination laws apply as usual. The employer must confirm to their employees in writing that they have been furloughed and a record kept for five years.

Rights at work

Employees still have the same rights at work, including: Statutory Sick Pay, maternity and other parental rights, rights against unfair dismissal and redundancy payments. Employees who are receiving Statutory Sick Pay, can be furloughed once they are no longer receiving Statutory Sick Pay.

Grants cannot be used to substitute redundancy payments.

Who can be furloughed?

Any entity with a UK payroll can apply, including businesses, charities, recruitment agencies and public authorities.

To be furloughed, employees must have been on the employer's PAYE payroll on or before 19 March 2020 and notified to HMRC on an RTI submission on or before 19 March 2020.

The scheme covers anyone who is paid through PAYE so that can include:

- full-time and part-time employees;
- flexible and zero-hour contracts staff;
- UK and foreign nationals;
- employees on fixed term contracts at 19 March, provided their contracts are renewed or extended during the furlough period;
- apprentices;
- individuals employing staff such as nannies (Individuals are not taxable on the grant received);
- shielding employees who are unable to work or need to stay home with someone who is shielding;
- employees who are unable to work due to caring responsibilities resulting from COVID-19, including looking after their children;
- office holders (including company directors) where furloughed arrangements are formally agreed;
- salaried directors, including directors of their own personal service company provided they only do work to fulfil their statutory duties;
- salaried members of LLPs;
- agency workers (including those employed by umbrella companies);
- limb (b) workers if paid through PAYE (Those who pay tax on their trading profits may be eligible for the Self-Employed Income Support Scheme).

IR35 contractors who are deemed employees with public sector engagements

For such deemed employees to be eligible for the scheme:

- the public sector organisation must agree the arrangement with the Personal Service Company and the fee-payer;
- the fee-payer would:
  - apply for the furlough payment;
  - pay at least the amount of wage-grant received to the PSC and report the payment via PAYE.
- the PSC would report the amount it pays to the contractor as deemed employment income via PAYE using box 58A on the PAYE Real Time Information return.

If the contractor also furlough's themselves as an employee or director of their own company, and is receiving any payments from a public sector client (including through the Job Retention Scheme), this income must be excluded from any calculation of the reference pay for the purposes of the Job Retention Scheme.

Redundant employees: HMRC has confirmed that where an employer made employees redundant, or they stopped working after 28 February 2020 but before 19 March, the employer can re-employ them, put them on furlough and claim for their wages through the scheme. This applies as long as the employee was on the payroll as at 28 February and had been notified to HMRC on an RTI submission on or before 28 February 2020. This extends to former employees who are re-employed both before and after 19 March 2020.

More than one employer: Employees with more than one employer can be furloughed for each job with the cap applying to each employer individually. Employees can be furloughed in one job and be part of the scheme but continue working for another employer and receive their normal wages.

Company in administration: Where a company goes into administration and there is a reasonable likelihood of rehiring the workers, say as part of a business sale, the administrator can access the Job Retention Scheme.

What these staff can do

While on furlough, employees cannot work so simply reducing their hours or pay will prevent them from being furloughed under the scheme. They cannot do any work that makes money or provides services for the organisation.

However, employees can undertake volunteer work and training but this cannot provide a service to or generate revenue for their employer. This means, for example, that apprentices can continue to train whilst furloughed. Where training is undertaken by furloughed employees, at the request of their employer, they are entitled to be paid at least their appropriate national minimum wage for this time(Apprenticeship Minimum Wage, National Living Wage or National Minimum Wage). The payment under the scheme may well provide sufficient monies to cover these training hours. However, where the time spent training attracts a minimum wage entitlement in excess of the furlough payment, employers will need to pay the additional wages.

If contractually allowed, employees are allowed to work for another employer whilst on furlough. Any new employee joining, while furloughed from another employment, should complete Statement C of starter checklist form.

Employees whose pay varies

If the employee has been employed for at least 12 months the employer can claim the higher of the:

- same month's earning from the previous year;
- average monthly earnings for the 2019/20 tax year.

However, if the employee has been employed for less than 12 months, the claim is for 80% of their average monthly earnings since they started work.

If the employee only started in February 2020, the 80% is calculated on a pro-rata for their earnings so far.

Past Overtime, Fees, Commission, Bonuses and non-cash payments

Employers can claim for any regular payments such as wages, non-discretionary overtime, fees and commission but discretionary bonuses, tips and future commission are excluded; so too are non-cash payments and non-cash benefits like company cars.

Benefits in Kind and Salary Sacrifice Schemes

The reference salary must not include the cost of non-monetary benefits, including taxable Benefits in Kind. Benefits provided through salary sacrifice schemes (including pension contributions) should also not be included in the reference salary. Where the employer provides benefits to furloughed employees, this should be in addition to the wages that must be paid under the terms of the Job Retention Scheme.

Normally, an employee cannot switch freely out of a salary sacrifice scheme unless there is a life event. HMRC agrees that COVID-19 counts as a life event that could warrant changes to salary sacrifice arrangements, if the relevant employment contract is updated accordingly.

Apprenticeship Levy and Student Loans

Both the Apprenticeship Levy and Student Loans should continue to be paid as usual. Grants from the Job Retention Scheme do not cover these.

Employees on unpaid leave

If this started after 28 February 2020, the employer could furlough them instead. Where an employee went on unpaid leave on or before 28 February, they can only be furloughed from the date on which it was agreed they would originally return from unpaid leave.

Interaction with sick pay

An employer may end up claiming both the Job Retention Scheme grant and statutory sick pay rebate scheme for an employee, but not for the same period of time.

The grant is not intended for short-term sickness or self-isolation when SSP is payable, but individuals who are shielding or on long-term sick leave can be furloughed under the Job Retention Scheme.

If an employee becomes ill while on furlough, they can be kept on furlough pay, but must be paid at least statutory sick pay. Alternatively, employers may decide to move sick employees onto Statutory Sick Pay and would no longer claim for the furloughed salary.

Holiday Pay

Furloughed employees continue to accrue leave as per their employment contract and can take holiday whilst on furlough. Where a furloughed employee takes holiday, the employer should pay their usual holiday pay in accordance with the Working Time Regulations. Employers will be obliged to pay additional amounts over the grant, though will have the flexibility to restrict when leave can be taken if there is a business need. This applies for both the furlough period and the recovery period.

Returning from statutory leave

Where an employee returns from statutory leave such as maternity leave and is furloughed, the Job Retention Grant should be based on their salary and not the pay that they were entitled to while on statutory leave.

Claims should be made either shortly before or during the running of the payroll and, claims can be backdated until the 1 March where employees have already been furloughed.

Where an agent who is authorised to act for an employer for PAYE purposes, they will be able to make a claim on the employer's behalf. However, employers using a file only agent to file their RTI returns, but doesn't act for employer in any other matters, they won't be authorised to make a claim and the employer will have to make the clam themselves.

HMRC will check the claim, and if eligible, pay it to the employer by BACS to a UK bank account.

Calculation guidance

HMRC has produced some useful guidance to help employers calculate the amount that can be claimed which can be found at:

> *https://www.gov.uk/guidance/work-out-80-of-your-employees-wages-to-claim-through-the-coronavirus-job-retention-scheme*

This guidance includes a:

- number of useful worked examples to help employers understand how the '80% of normal wage' calculation works in a number of more challenging scenarios; and
- link to HMRC's Coronavirus Job retention Scheme calculator for employers to use

Tax Treatment of the Coronavirus Job Retention Grant

Payments received by a business must be included as income in the business's calculation of its taxable profits for Income Tax and Corporation Tax purposes.

Businesses can deduct employment costs as normal when calculating taxable profits for Income Tax and Corporation Tax purposes. Individuals with employees that are not employed as part of a business (such as nannies or other domestic staff) are not taxable on grants received under the scheme.

When the scheme ends

When the government ends the scheme, employers must decide whether employees:

- can return to their duties; or
- are made redundant.

https://www.gov.uk/guidance/claim-for-wage-costs-through-the-coronavirus-job-retention-scheme#history

‘Whistle-blower’ service

HMRC has announced an online ‘whistle-blower’ service to enable workers to report employers that abuse the Coronavirus Job Retention Scheme. Clearly HMRC want to support both employers and employees but payment should only go to employers who are following the rules.

Victoria Todd, Head of LITRG, said:

> “Reports we are receiving from workers indicate to us that there are a number of employers out there who are asking their staff to carry on working, even though they have been placed on 'furlough'.
>
> “More worrying still, it seems there are some employers who intend to claim the grant but who then have no intention on paying it over to their employees.
>
> "LITRG is also concerned to hear of employers inserting 'claw back' provisions in employee furlough agreements to try and protect the employer should HMRC ask for grant to be repaid (or, indeed, to cover the cost of paid-out wages if they are unsuccessful in claiming support through the Job Retention Scheme in the first place).”
>
> *https://www.tax.org.uk/media-centre/press-releases/litrg-press-release-job-retention-scheme-‘whistle-blower’-service*

Expenses when working from home (Lecture P1191 – 21.49 minutes)

Following the Government’s March announcement that, wherever possible, people should work from home, employers and employees may be wondering whether there are any tax breaks available for the household expenses that they are now incurring.

Provided that the employee can demonstrate that their home is truly a place of work, some relief for expenses should be available.

In principle, there are two ways that homeworking employees may be able to claim relief:

1. The employer could make tax free payments to cover employment related costs;

2. The employee could claim a deduction against income for qualifying expenses that they incur.

1. Tax-free payments by employer

Under s316A ITEPA 2003, employers are able to reimburse employees tax-free any reasonable additional household expenses that the employee incurs in carrying out their employment duties at home.

Additional household expenses: HMRC’s Employment Income Manual (EIM01474) clarifies the types of expense that can be reimbursed tax-free:

““heating and lighting the work area or the metered cost of increased water use….. increased charges for broadband, home contents insurance or business telephone calls”

As we are looking at 'additional' amounts, costs that would be the same whether or not the employee works at home are excluded, so that would include mortgage interest, rent, council tax or water rates.

There is currently no limit to the amount that an employer can reimburse but once payments exceed £6 per week (£4 per week prior to 6 April 2020), the employer must keep records to evidence that the higher payments were wholly in respect of additional household expenses incurred by the employee working from home.

As the legislation stands, tax-free reimbursement is only allowed if the reimbursement falls under a homeworking arrangement where the employee regularly works at home. So the big question at the moment is whether these homeworking rules apply to employees now working from home on a temporary basis due to COVID-19? HMRC has published guidance that identifies which expenses can be provided tax-free and which are taxable.

The guidance covers employees who are required to work from home either because their place of work has shut or because they are following advice to self-isolate. It does not cover Furloughed employees.

Specific items covered in the guidance include:

- Mobile phones - One mobile phone per employee may be provided tax free, with no restriction on private use;

- Broadband - Where broadband connection is needed to work from home but it is not already available, the cost can be reimbursed tax free by the employer but, any private use must be limited;

- Additional expenses – Where the employee incurs additional expenses for electricity, heating, metered water etc or incurs <u>additional</u> broadband expenses, this will be covered by the £6 weekly allowances explained above. If the claim is higher, then the employee will need to seek employer approval prior to incurring the costs and keep receipts;

- Laptops, tablets, office supplies – Provided these are used mainly for business purposes these will be non-taxable; however, reimbursing expenses for office equipment that the employee has bought will be taxable and should be reported on your PAYE Settlement Agreements

Significant private use

HMRC state that significant private use should not be based on the time spent on different uses but rather on the employee's duties and their need to have the equipment or services provided so that they can do their job.

HMRC accepts that where an employer clearly states their private use policy, in say an employment contract or by asking employees to sign a statement acknowledging company policy on what use is allowed and any disciplinary consequences if the policy is not followed, any decision not to recover the costs of private use is a commercial decision, rather than rewarding your employee.

2. Deduction against income for qualifying expenses

The exemption above only applies to payments made by the employer to cover employee homeworking expenses. If an employee incurs additional expenses as a result of working from home that are not reimbursed, they will be able to claim these expenses as a deduction from earnings if they satisfy the 'wholly, exclusively and necessarily' test that applies under s336 ITEPA2003.

HMRC guidance at EIM32760 suggests that to pass the wholly, exclusively and necessarily test, the employee should not be able to choose between working at the employer's premises or elsewhere. In the current situation, where the government is requiring employees to work at home wherever possible, a tax deduction should be available for additional household expenses similar in nature to those covered by the employer reimbursed homeworking payments.

https://www.gov.uk/guidance/check-which-expenses-are-taxable-if-your-employee-works-from-home-due-to-coronavirus-covid-19

Car unavailable for private use (Lecture P1191 – 21.49 minutes)

Employees, whether working from home or furloughed, with company cars that are currently sitting parked in a garage or on a drive may be wondering whether their car benefit can be reduced.

Remember, a car benefit arises where a car is made available for private use, irrespective of whether it is so used. To prove that there is no private use, an employer should normally consider:

- Ensuring that the employee's employment contract bans private use;
- Insuring the car principally for business use;
- Keeping the car on the company's business premises;
- Requiring a mileage log to be kept;
- Preparing a Board Minute banning private use.

The benefit can be reduced for non-availability for a continuous period of at least 30 days. Under normal circumstances, this could include a car where an employee joins or leaves a company part way through a tax year or, for example, where a car is involved in a major accident and is off the road while for several months.

The Car Fleet industry is reporting that HMRC has confirmed that a car that is kept on an employee's drive is available for private use. A SORN declaration as proof of unavailability would not be accepted and the benefit would still apply. Currently it may not be possible to hand the car back to the employer, and so HMRC "are accepting that where all the keys (or tabs) are held by the employer, and the employee does not have the authority to request that the keys be returned to them, the car would be 'unavailable.'"

https://www.fleetnews.co.uk/news/fleet-industry-news/2020/04/02/coronavirus-hmrc-company-car-tax-clarification-welcomed

Would it be possible for the company to introduce a policy prohibiting private use until further notice? Any such policy should be minuted at a board meeting and reflected in an updated employment contract (where appropriate).

Presumably, HMRC would need to see evidence that the car had not been used privately in the period. This could be achieved using a tracker or alternatively ‘before and after’ photos of the car mileage to show it had not been moved. Whether HMRC would accept this approach we do not know but some clients might thing it is worth a try.

Remember, if any of your clients do go down this route, changing the basis on which the car is used would need to be reported on a P46(Car) form to HMRC.

Spotlight 54—Promoters targeting workers helping the NHS

Promoters are targeting workers who, following the government’s request, are returning to work for the NHS to help during the COVID-19 outbreak. These workers are being offered tax avoidance schemes claiming to reduce the tax burden on income received.

Typically the schemes being offered result in the worker receiving two payments:

- Payment 1 - A small amount, usually around the National Minimum Wage level or a flat payment of say £100 per week.

  This is declared as earnings and goes through an umbrella company’s payroll;

- Payment 2 – This is being described as a loan, annuity, shares, capital advance involving mutual, joint or co-ownership, or a payment derived from a revolving line of credit facility, or some other non-taxable form.

  The promoters are claiming that this amount is not taxable.

HMRC is warning such workers not to sign up to these schemes as they consider them to be tax avoidance as earnings are effectively being disguised to avoid paying Income Tax and National Insurance contributions.

HMRC recommend that if workers are asked to sign anything other than their contract of employment that they should be very sure what they are signing. Separate agreements to receive loans, advances, shares, annuities or anything else not relevant to their work should ring alarm bells.

HMRC’s advice to workers is to compare two calculations to see if the scheme is legitimate and compliant:

1. The amount of tax they would normally have to pay on their income by using HMRC’s online tax calculator;
2. The fees being charged by the promoter and the amount of tax and National Insurance contributions that has been deducted.

https://www.gov.uk/guidance/tax-avoidance-promoters-targeting-returning-nhs-workers-spotlight-54

Volunteering during the pandemic

On 24th March the Health Secretary Matt Hancock stated that the Government was launching a new scheme to recruit 250,000 volunteers to support the NHS through the coronavirus pandemic.

Volunteers were then asked to come forward and sign up to help by doing one or more of the tasks listed below:

- Community Response volunteer - collecting and delivering shopping, medication or other essential supplies for someone who is self-isolating;

- Patient Transport volunteer - providing transport to patients who are medically fit for discharge, and ensuring that they are settled safely back in to their home;

- NHS Transport volunteer - transporting equipment, supplies and medication between NHS services and sites, and assisting pharmacies with medication delivery;

- Check-in and Chat volunteer - telephoning individuals who are at risk of loneliness as a consequence of self-isolation.

Currently (5th April 2020), the Royal Voluntary Service are processing 750,000 NHS volunteer responder applications and the volunteering site is currently closed. Anyone who is still interested in helping are advised to keep an eye on @GoodSamApp and @RoyalVolService for updates.

Voluntary office-holders are treated as are employees. This means that any business expenses that are paid or reimbursed are exempt from tax (s289A ITEPA 2003).

Strictly speaking, the cost of expenses like travelling from home to where the voluntary work is undertaken is private travel, and would theoretically be taxable. In practice by concession, HMRC have not sought to tax such amounts where the volunteer is otherwise untaxed. Finance Bill 2020 looks to put this concessionary practice onto a legal footing. Clause 13 introduces legislation that will exempt reasonable expenses incurred in carrying out the duties of the office from income tax. So if the volunteer is reimbursed for the actual cost incurred on travel, telephone, protective clothing and the like, there should be no tax or national insurance contributions to think about. That would also include mileage that is reimbursed using the statutory mileage rates, so cars and vans at 45p for the first 10,000 miles).

Volunteers often choose to waive their entitlement to expenses. Remember, the most tax-efficient way of waiving such expenses is for the volunteer to receive the expense payment and then to gift it back to the charity as a Gift Aid donation, as there must be an actual payment for Gift Aid to apply. Don’t forget that the volunteer must have paid enough tax in the year to cover the tax on the gift as otherwise, HMRC may decide to recover the tax from the volunteer.

https://www.goodsamapp.org/NHSvolunteerresponders
https://www.goodsamapp.org/assets/pdf/GoodSAMNHSVolunteerinFAQs.pdf

Project manager subject to IR35 **(Lecture P1191 – 21.49 minutes)**

Summary –An IT project manager working for Nationwide through his personal service company fell within IR35 and so was subject to income tax and NICs as an employee.

Northern Lights Solutions Ltd is wholly owned by Robert Lee, who together with his wife are directors of the company. The company's business consisted of supplying Robert Lee's services

For some 10 years before setting up the company, Robert Lee worked across a number of industries as a project manager. In the six months immediately prior to incorporation, he was engaged by Nationwide through an umbrella company, acting as Robert Lee's employer, deducting PAYE and NICs through payroll systems and providing his services to Nationwide. Since its incorporation in 2008, Robert Lee worked almost continuously for Nationwide for seven years under a series of contracts with similar terms. He stated that in practice he was on Nationwide's premises almost continuously.

The issue to be decided was whether Robert Lee should be treated as a Nationwide employee under the IR35 rules as argued by HMRC.

Northern Lights Solutions Ltd appealed.

Decision

In common with other IR35 related cases, the First Tier Tribunal considered a number of factors, concluding that the relationship that existed between Robert Lee and Nationwide was one of employment.

- Despite there being several contracts, with no obligation outside of those contracts to offer work or provide services, mutuality of obligation existed within each of those contracts. Robert Lee worked for Nationwide for many years full-time, with only a few gaps;
- Nationwide controlled when, where and how long Robert Lee worked. The Tribunal concluded that Nationwide also exercised sufficient control over his actions, despite him having substantial freedom over how he managed his projects. This freedom was consistent with that of a highly-skilled employee and did not amount to the level of control exercised by a self-employed person;
- Other than not being engaged on a new contract, Robert Lee took no financial risk beyond that of an employee, and was 'part and parcel' of Nationwide's operations;
- Despite the contracts allowing for a substitute to be provided, there was no real prospect of this ever happening.

In summing up, the First Tier Tribunal found that the hypothetical contract between Robert Lee and Nationwide was one of employment and the appeal was dismissed.

Northern Lights Solutions Ltd v HMRC (TC07594)

Statutory Residence Test (Lecture P1191 – 21.49 minutes)

When determining tax residency in the UK, under the statutory residence test, individuals who have been prevented from leaving the UK may be able to exclude up to 60 days in a tax year due to 'exceptional circumstances'.

HMRC's Residence Domicile and Remittance basis manual has now been updated to give guidance as to when days should be disregarded as exceptional days due to COVID-19 (RDRM11005). They state that this guidance should be read in conjunction with the current published guidance on exceptional circumstances that is contained at RDRM13200.

In summary, under the new guidance, days spent in the UK can be disregarded due to exceptional circumstances where the person is:

- quarantined or advised by a health professional or public health guidance to self-isolate in the UK as a result of the virus;
- advised by official Government advice not to travel from the UK due to the virus;
- unable to leave the UK as a result of the closure of international borders; or
- asked by their employer to return to the UK temporarily as a result of the virus.

Remember, to exclude these exceptional circumstances days, the individual must leave the UK immediately upon the restrictions being lifted.

https://www.gov.uk/hmrc-internal-manuals/residence-domicile-and-remittance-basis/rdrm11005

The Chancellor has written to the chair of the Treasury Select Committee to outline temporary changes to the Statutory Residence Test for those coming to the country to work on Covid-19 related activity, bringing talent and expertise that is greatly needed. The Chancellor plans to amend the Statutory Residence Test so that initially any period(s) between 1 March and 1 June 2020 spent in the UK by individuals working on COVID-19 related activities will not count towards the residence tests. The plan is to only support persons whose skillsets are currently required.

https://www.gov.uk/government/publications/covid-19-temporary-changes-to-the-statutory-residence-test?utm_source=7c491cd8-8763-40cd-9f32-735178025cb4&utm_medium=email&utm_campaign=govuk-notifications&utm_content=immediate

Taking money from pensions

Remember, at 55, individuals are eligible to drawdown on their pension. State pensions excluded, most pension schemes allow 25% of the fund to be taken tax-free, with the balance taxable as income.

Taxpayers should be aware that once taxable income exceeds £50,000, a number of potential tax issues need to be considered so that:

- higher rate income tax kicks in;
- high income child benefit charge is triggered for those claiming child benefit;

On state benefits the LITRG say:

> "One-off or irregular sums taken from pensions could be treated as 'capital' for the purposes of means-tested state benefits, but regular amounts are likely to be treated as income.
>
> Either capital or income treatment could have an immediate effect on … entitlement to state benefits, depending on … overall circumstances, and 'local' benefits like council tax reduction could also be affected."

And on tax credits they say:

> "taxable income from pensions is also income for the purposes of tax credits.
>
> You could end up with a tax credits 'overpayment' – this means that you may have been paid too much and have to pay it back. It could also mean you end up with less tax credits in the following year as well.
>
> You do not actually have to tell the Tax Credit Office about changes to your income until you renew your claim at the end of the tax year, but you might wish to tell them sooner about money taken from a pension in order to reduce the amount of any overpayment.
>
> One mistake that we have seen tax credits claimants making is reporting the whole of their lump sum as tax credits income. As mentioned above, it is only the taxable part that is income for tax credits; any tax-free lump sum does not have to be included."

Longer term, once an individual has started to drawdown, provided they still have relevant earnings, they can still pay money into their pension, but only £4,000 a year gross will be eligible for tax relief.

www.litrg.org.uk/tax-guides/coronavirus-guidance/coronavirus-taking-money-your-pension

Pension Scheme Pay Elections (Lecture P1194 – 13.16 minutes)

Introduction

FB 2020 will greatly reduce the number of taxpayers affected by the annual allowance (AA) tapering rules. It raises the two relevant income limits (both of which must be exceeded for tapering to apply) by £90,000, to £200,000 and £240,000 respectively. The latter applies to 'adjusted income', which includes employer pension inputs.

Some taxpayers will still suffer AA tax charges, which arise where pension inputs exceed the AA. The latter remains £40,000 before taper. Even more taxpayers will have to deal with charges that have arisen in the period up to 5 April 2020, particularly where they are in defined benefit (DB) schemes and have had a significant increase in salary (and commensurate increase in pension benefit accrual) during the tax year concerned.

A benefits statement, which will show annual pension inputs, should be requested from all DB schemes, as they are not sent out automatically.

'Scheme Pays' facility

An election is available to get the pension scheme to pay any tax arising on the AA charge, if that tax is greater than £2,000. This election may be either 'mandatory' or 'voluntary'.

For Scheme Pays to be mandatory you must meet the conditions specified by HMRC, which are:

- Your total AA charge tax liability for the tax year exceeds £2,000;
- The amount of your pension growth in the scheme alone was more than the AA in the relevant year; and
- You give your notification to the scheme within the statutory timescale.

Voluntary Scheme Pays (VSP) applies where the tax charge is due to:

- pension input across more than one scheme, or
- a tapered annual allowance.

Under VSP, the pension scheme does not have to agree to settle the tax charge on behalf of the member.

Impact of Scheme Pays

The member does not have to settle the AA tax charge via self assessment. Instead, the amount will be recovered by the scheme:

- when your benefits are paid at retirement, impacting both pension and (if appropriate) lump sum; or
- if you transfer out of your pension scheme.

Scheme Pays debits are increased by the CPI.

Deadline

You must tell your pension scheme by the 31st July in the year following the year to which the AA tax charge relates. E.g. if you want your scheme to pay your AA tax charge for 2018/19, then you must tell your scheme no later than 31 July 2020.

You will have to send your election before the deadline if:

- You expect to retire - your completed election must be submitted before your pension is authorised;

- You reach age 75 - your completed election must be received before your 75th birthday.

Clients with DB schemes should be told to inform their advisors of any major change in circumstances (e.g. promotion, large pay rise) ASAP, which will highlight the need to get a benefits statement.

If you do not have the information available to calculate the exact amount of AA charge for the relevant year, you can estimate it. You can then complete a scheme pays election using the estimated figures.

Once you have received a final benefits statement, you can amend your tax return within 12 months of submitting the original. You can then submit a revised scheme pays election.

Other Scheme Pays points

If you die whilst still a member of your pension scheme, any recovery due because of Scheme Pays will be written off. Your heirs will receive the same level of death benefits as if you hadn't utilised Scheme Pays.

Dependents' benefits are also unaffected, being based on your pension before any recovery for Scheme Pays.

Contributed by Kevin Reed

Child Benefit claims

Under normal circumstances, parents must register the birth of a newborn before they can register for Child Benefit. However, this may not be possible as currently local registry offices are closed because of COVID-19.

This will not prevent parents from claiming child benefit now:

- First time parents will need to fill in Child Benefit Claim form CH2. This can be downloaded at:

  https://www.gov.uk/government/publications/child-benefit-claim-form-ch2.

  A note should be added stating that they have not been able to register the birth due to COVID-19 and then it should be sent to the Child Benefit Office at the address on the form.

- Parents already claiming Child Benefit can complete the form or add their new-born's details over the phone on 0300 200 3100. They will need their National Insurance number or Child Benefit number.

Remember, Child Benefit claims can be backdated by up to 3 months.

Taxpayers who have been made redundant, or put on furlough, causing their income to drop, may now be eligible for child benefit:

- Those who have previously registered but 'opted out' need to make a phone call to opt back in using their National Insurance number to identify them and the phone number given above.

- Those who never registered will need to fill out the claim form referred to above.

Where Child Benefit is now claimed, remember they should double check at the end of the tax year that the HICBC does not apply. It could be that when the individual returns to work their new salary pushes them over the £50,000 (or £60,000) threshold for the year.

To avoid the HICBC in future tax years, once their income recovers, taxpayers should consider opting out of child benefit once more.

Capital Taxes

New reporting on UK residential property (Lecture P1191 – 21.49 minutes)

Since April 2015, non-UK residents have been required to report disposals of interests in UK property (residential and non-residential properties, direct and indirect disposals) regardless of whether there was a CGT liability, within 30 days of completion of the disposal. Payment could be deferred via a Self- Assessment return.

From 6 April 2020:

- the 30 day reporting and payment requirement has been extended to include UK resident individuals disposing of UK residential property, usually where the contract was exchanged from 6 April 2020 onwards;

- the non UK resident payment deferral option no longer applies and any tax owed must now be paid within the 30-day reporting and payment period;

- there is a new online reporting service that can be used by both UK and non UK residents.

UK residents disposing of UK residential property

From 6 April 2020, taxpayers have 30 calendar days from the date of completion to report and pay any CGT owed.

However, where gains are not chargeable to capital gains tax they do not need to be reported so this would include:

- Main residence where gain is covered by PPR relief;

- Gains are covered by the annual exemption

- Property transferred on a no gain no loss basis between spouses or civil partners;

- Property acquired to develop and re-sell where profits are liable to income tax.

That means that the most likely relevant disposals will be:

- a UK holiday home;

- a UK property that was previously let out;

- an inherited house in the UK, not used as taxpayer's main residence.

Reporting the gain

From 6 April 2020 HMRC have introduced a new Beta online service on GOV.UK so that taxpayers can notify and pay the CGT due on the gain. The site can be found at:

https://www.tax.service.gov.uk/capital-gains-tax-uk-property/start/report-pay-capital-gains-tax-uk-property?_ga=2.245893127.2044502986.1586156364-921708348.1578308931

The site provides links through for individuals who are:

- Acting in their own capacity;
- Acting as an agent for a client;
- Acting as trustee or are an agent acting for a trustee;

Note that:

- Paper returns are still required for individuals, agents and personal representative who are reporting property sold for someone who has died;
- Non-residents reporting indirect or mixed-use disposals must use the od reporting system at:

https://www.tax.service.gov.uk/shortforms/form/NRCGT_Return

Failing to report and pay tax within 30 days

Initially, HMRC has stated that they will not issue late filing penalties for returns received late up to and including 31 July 2020. This means that transactions completed from 1 July 2020 onwards will receive a late filing penalty and interest will accrue if the tax remains unpaid after 30 days.

HMRC have stated that where a chargeable UK residential property has been sold for cash, the taxpayer will have received money from the sale and so should be able to pay the tax due. However, the Government acknowledges that this will not always be the case. Where property has been gifted, tax may be payable but no cash will have changed hands. Equally, as a result of the Covid-19 crisis, the taxpayer may have been forced to sell property to generate funds for their business. HMRC has stated that they will be adopting a flexible approach to dealing with requests for time to pay arrangements, taking specific circumstances into account, on a case-by-case basis.

Following the introduction of the 30 day reporting requirement for non residents in April 2015, there have been a good number of First Tier Tribunal cases involving non-residents who failed to report on time, arguing that they were not aware of the UK rule change. Some, but not all, were overturned on appeal. However, it is likely that the courts will be less lenient with UK residents, who arguably should keep up with changes to UK legislation.

Year end *Self-Assessment Return – to file or not?* Where a taxpayer has no reason to file a Self-Assessment tax return, other than reporting their property disposal that falls within the new 30 day regime, they will not need to register for Self-Assessment. However, where a taxpayer is required to file a Self-Assessment return for other reasons, they must continue to do so and report all income and gains for the tax year, including any gains that have already been reported, and tax paid, within the 30 days of completion.

Suggested action

It is important that tax advisors contact their clients to make sure that they are aware of the new legislation and more importantly, they understand how the changes could affect them when they sell UK property.

For many, property disposals are not regular events, so it might be worth reminding clients annually that if they are considering a property sale, they should make contact well in advance. Issuing clients with an updated engagement letter that draws attention to these new in-year reporting and payment requirements would be a good idea.

Agents who need to report and pay tax under this new system on behalf of a client cannot use their existing 64-8 authorisations. If they do not already have one, they need to set up an agent services account and then log in to that account and select 'ask a client to authorise you'. This then involves entering the client's details that then creates a digital link to share with the client, asking them to authorise the agent.

https://www.gov.uk/government/news/get-ready-for-changes-to-capital-gains-tax-payment-for-uk-property-sales

Not a payment for goodwill (Lecture P1191 – 21.49 minutes)

Summary – A payment of £1.2 million was not payment for goodwill but should be treated as employment earnings under s 62 ITEPA 2003.

Neill Dyer was a Chartered Accountant who ran a successful practice. At various times, he traded as a sole trader and in partnership as Dyer & Co, before incorporating his business in 2003. He maintained that on incorporation, goodwill was not transferred to the company. This was reflected by the fact that no goodwill appeared in the company accounts.

A few years later, after he was admitted to hospital and a fellow director clocked up gambling debts, the new company failed and on specialist advice, the company was liquidated with the business and clients being transferred to a new company owned by Neill Dyer. Under a Deed, the parties agreed to settle all claims that the liquidator might have had against Neill Dyer and the company in connection with the liquidation in return for a payment of £100,000. In his witness statement, Neill Dyer said that the sum represented payment for personally acquired the goodwill from the liquidator.

In good health, the business improved and the new company's turnover returned to its old levels. In 2014, he claimed that he had assigned ownership of goodwill back to the company for £1.2m. He claimed entrepreneurs' relief as an associated disposal.

HMRC argued that the goodwill was incapable of existing separately to the business. Rejecting the entrepreneurs' relief claim, HMRC raised an income tax assessment amending his 2014/15 self-assessment tax return and included the £1,200,000 as employment income, resulting in extra tax due of £431,400.

Neill Dyer appealed.

Decision

The First Tier Tribunal stated that it was clear from the terms of the Deed that the £100,000 payment settled all potential claims, and not payment for the transfer of any goodwill from one company to another.

The First Tier Tribunal decided that Neill Dyer had not established, on the balance of probabilities, that he owned any goodwill that was capable of being assigned. The Tribunal agreed with HMRC's submission and found that, even if Neill Dyer had retained any personal goodwill in 2003, it would not have existed or had any value in 2014 because, by then, the company would have established its own goodwill independently of any goodwill that he had formerly enjoyed as a sole practitioner or partner.

The £1.2 million payment was not consideration for goodwill and so entrepreneurs' relief was denied. Neither was it a distribution but, rather it represented earnings derived from Mr Dyer's employment with the company. The Tribunal agreed with HMRC that the payment of £1.2 million should be treated as earnings under section 62 ITEPA 2003.

Neill Dyer V HMRC (TC07567)

Temporary electronic Stamp Duty service

HMRC has introduced a temporary electronic service for Stamp Duty.

Under this service, taxpayers must:

- Pay Stamp Duty electronically using Faster Payment, Bacs or CHAPS, as cheques will not be processed until these COVID-19 measures end;
- Email details of the transaction to HMRC, together with an electronic copy of the document that would otherwise have been stamped, including an electronic signatures; Do not send by post.

Deadlines

The deadline for payment and providing the documents to HMRC is unchanged at 30 days after the date the transfer document was dated and signed. Presumably that also means that there will be penalty and interest payable if the deadline is missed.

Paying Stamp Duty electronically

When making the payment, it is important for taxpayers or their agents to use an appropriate payment reference to enable HMRC identify the payment. Using the wrong reference could delay payment.

The reference should be the taxpayer's initial and surname followed by the payment amount, but with no spaces so for example: JBrown/240.00

Email details

It is important HMRC need to know:

- the payment reference;
- the payment amount;
- the date of payment;

- an electronic copy (scanned PDF) of either:
    - signed and dated stock transfer form
    - instrument of transfer
    - form SH03 for return of purchase of own shares

These details must be emailed to HMRC at: stampdutymailbox@hmrc.gov.uk.

This same email address should be used for reliefs, exemptions and queries relating to payments and penalties.

HMRC has stated that they will accept e-signatures while COVID-19 measures are in place.

Confirmation

If HMRC are able to process your transaction, they will send a confirmation letter by email. No stock transfer forms are currently being stamped.

HMRC has stated that they will contact you by email if they have any questions.

HMRC's website states that this guidance will be updated when the temporary service ends.

https://www.gov.uk/guidance/pay-stamp-duty

Administration

Filing extension at Companies House (Lecture B1191 – 17.10 minutes)

From 25 March 2020, provided their filing deadline has not been passed, companies will be able to apply for an automatic 3-month extension for filing their accounts.

In their Press Release, Companies House claims that applications can be made through a fast-tracked online system that should take just 15 minutes to complete.

Companies that do not apply for this extension but then file their accounts late will have an automatic penalty imposed. They say that the registrar has very limited discretion to not collect a penalty. Each COVID-19 appeal will be treated on a case-by-case basis, using policies already in place to deal with appeals based upon unforeseen poor health.

Companies House say that companies that have already extended their filing deadline, or shortened their accounting reference period, may not be eligible for this extension.

The government is consulting with company representative bodies, legal practitioners and others, to look at solutions for the impact COVID-19 may have on companies' ability to hold Annual General Meetings. Updated guidance should be published in due course.

https://www.gov.uk/guidance/coronavirus-guidance-for-companies-house-customers-employees-and-suppliers

Dealing with HMRC during the crisis

On 9th April, the Chartered Institute of Tax (CIOT) announced they are discussing with HMRC a number of practical matters to help businesses and individuals continue to engage with HMRC.

Communicating with HMRC

HMRC has confirmed that its post rooms remain open but that taxpayers and their agents should expect delays.

Where possible taxpayers and their agents should use HMRC's online services. The CIOT has produced a useful table summarising the digital communication changes that HMRC has already announced in relation to a number of areas including statutory and non-statutory clearances. This can be viewed at:

https://www.tax.org.uk/policy-and-technical/covid-19/communicating-hmrc

HMRC has introduced digital communication options for dealing with stamp duty and non-statutory clearances. Barristers can now deal with VAT correspondence by email as that particular post room has been closed. Corporate interest restriction elections can be emailed to customer compliance managers or a central email address.

For IHT, payments and repayments can no longer be made by cheque and so must be made using online or telephone banking. Until further notice, HMRC will accept printed signatures on IHT400 and IHT100 forms where:

- there is a professional agent acting, and both the names and other personal details of the LPRs or trustees are shown on the declaration page.
- account includes a clear and unambiguous statement from the agent confirming that all the LPRs or trustees have seen the account and have agreed to be bound by the declaration.

As expected, HMRC telephone helplines are extremely busy due to increased demand and staff being off sick. The phones are only manned between 8am and 4pm Monday to Friday and HMRC has advised that their lines are least busy between 8am and 10am.

Paper returns

As we reported last month, HMRC will no longer be posting blank tax returns to self-assessment taxpayers automatically. Those who wish to file on paper will need to download one or contact HMRC to request that one is posted.

Where such taxpayers are planning on claiming under the Self Employed Income Support Scheme due to loss of income as a result of COVID-19, these taxpayers should consider registering online now in an attempt to speed up receipt of the grant due when it is paid and facilitate any repayment that may be subsequently due. We have been told that there will be alternative ways to claim but these can only be slower.

www.gov.uk/government/news/hmrc-to-stop-automatically-sending-paper-self-assessment-returns

First Tier Tribunal hearings

On 15 April 2020, the First Tier Tribunal issued 'Help for users' to explain how the Tribunal are currently operating during the coronavirus pandemic. It summarises the Practice Statements, Directions and announcements previously made by the Tax Chamber which are available on the COVID-19 guidance page on the Judicial and Tribunals website.

With a reduced core staff and many staff working from home, including judges who are working remotely, the Tribunal has requested that, wherever possible, appeal notices should be submitted online at https://www.gov.uk/tax- tribunal/appeal-to-tribunal or by email. If notices are submitted late, they should be submitted with an application for permission to appeal late explaining why the notice of appeal was late.

Until further notice:

- There will be no hearings at which persons are physically present, except if it is a priority case and with the permission of the Chamber President or his delegate;
- All applications and substantive appeals will be dealt with on papers/email as far as possible and decided by a judge sitting alone;

- All judges will work remotely and work with electronic copies of documents provided by the parties,.
- If a matter cannot be dealt with on papers, a hearing by telephone (or video, if available) will be arranged as soon as possible;
- If a case is not suitable for hearing by telephone or video then it will be listed for a physical hearing on a date in the future when it is safe to do so.

The Tax Chamber's administrative centre in Birmingham will allocate work and list hearings, including arranging telephone conference or video facilities.

Telephone and video hearings will be recorded where practicable.

On 21 April, a Direction was issued stating that all proceedings received by the Tribunal before 24 March 2020 and assigned at any time before 21 April 2020 to the standard or complex category are stayed up to and including 30 June 2020.

The dates of all hearing windows and for compliance with all time limits in those proceedings are further extended by 70 days.

The directions do not apply to any proceedings received by the FTT on or after 24 March and do not extend any statutory time limit for notifying appeals to the FTT.

https://www.tax.org.uk/sites/default/files/200324%20COVID-19%20FTT%20Tax%20Chamber%20Presidential%20Guidance.pdf

https://www.judiciary.uk/wp-content/uploads/2020/04/14-Apr-20-Tax-Chamber-First-Tier-Tribunal-Help-for-Users.pdf

Upper Tribunal hearings

The Upper Tribunal has also issued guidance 'Help for users' to explain how the Upper Tribunal are currently operating.

Unsurprisingly, the Upper Tribunal will be operating on a similar basis to the First Tier Tribunal but in most case, access to documents should be less of an issue.

Certain hearings which should been heard during the period when there was no access to case files have been adjourned, with arrangements made to re-list those hearings.

The judges (both the tribunal judges and the high court judges) will be working remotely and, until further notice, the hearings will take place remotely via Skype for Business, but alternatives will be considered.

Where a party considers that a hearing cannot fairly take place remotely and will need to be adjourned, that question will be referred to a judge for determination.

https://www.judiciary.uk/wp-content/uploads/2020/04/14-Apr-20-Tax-and-Chancery-Chamber-Upper-Tribunal-Help-for-Users.pdf

Facilitating Tribunal practice changes

SI 2020/416 The Tribunal Procedure (Coronavirus) (Amendment) Rules 2020 was laid before Parliament on 9 April 2020, to make temporary changes to various tribunal rules which include the following:

- Paper-based decisions: Tribunals will be able to take decisions on the papers without the parties' consent;

- Remote proceedings: Both First Tier and Upper Tribunals will be able to conduct proceedings remotely, with the power to hear remote cases in private if they cannot be broadcast and accessed by the public.

These emergency powers apply from 10 April 2020 until the expiry of the Coronavirus Act 2020 (broadly 24 March 2022)

https://www.judiciary.uk/wp-content/uploads/2020/04/14-Apr-20-Tax-and-Chancery-Chamber-Upper-Tribunal-Help-for-Users.pdf

New legal proceedings and pre-action letters

Email only

Due to COVID-19, where possible, new legal proceedings and pre-action letters should be served via email to the following addresses rather than by post (Do not send hard copy duplicates):

- For new legal proceedings: newproceedings@hmrc.gov.uk.

- Pre-action letters: preactionletters@hmrc.gov.uk.

Do not that any other correspondence sent to these email addresses will be deleted unread.

Attachments

Where attachments are included these should be sent bearing the following in mind:

- Use a common format such as PDF or MS Word;

- Do not exceed 10mb in total (split the contents into smaller emails if necessary).

Where splitting is not practical, you should serve the principal documents (claim form and particulars of claim) and request HMRC to contact you to make alternative arrangements.

Allocating cases

For all proceedings (including in the Supreme Court) an HMRC lawyer will be allocated the case, and all subsequent service should be effected on their, or any nominated successor's, HMRC email address.

https://www.gov.uk/government/news/hmrc-to-accept-service-of-legal-proceedings-by-email

Making Tax Digital (MTD) for income tax (Lecture B1191 – 17.10 minutes)

The current plan is still to make MTD for income tax compulsory for the self-employed and landlords but not before April 2021.

On 19th March 2020 HMRC released further guidance about MTD for income tax that is currently optional for those that are eligible to sign up on a voluntary basis.

At the moment, a limited number of taxpayers can sign up on a voluntary basis but only if they are:

- UK resident;
- registered for Self Assessment and both returns and payments are up to date;
- a sole trader with income from one business only, landlord who rents out UK property; or both.

However, if these individuals have income from any other source or claim tax relief on any payments, they are currently ineligible to join.

Compatible software

Taxpayers will need to keep digital records of all their business income and expenses from the start of the accounting period for which they sign up. Obviously it is important that the software that is used is compatible with Making Tax Digital for Income Tax and so it will need to be authorised online, as part of the sign up process.

Signing up

Taxpayers sign up online and so will need a Government Gateway user ID and password and can choose to sign up for either their current or next accounting period.

To do so, they will need their:

- business name
- email address
- National Insurance number
- Unique Tax Reference number
- accounting period
- accounting type such as cash basis or accruals
- This should be checked before signing up

Submitting information to HMRC

The software will prompt taxpayers to send business income and expense summaries every three months and Then at the end of the taxpayer's accounting period, rather than submitting Self Assessment tax return, they will need to finalise records for the year by making any accounting adjustments that are needed and then submitting a declaration to confirm that the updates sent are correct. This needs to be done by the normal 31 January deadline for Self Assessment returns.

Once done, taxpayers will be able to view the calculation of tax due both in their software and online at HMRC. This must be paid over to HMRC by 31 January the following tax year.

https://www.gov.uk/guidance/follow-the-rules-for-making-tax-digital-for-income-tax

What To Do When Things Go Wrong (Lecture P1195 – 14.05 minutes)

Previous webinars have looked at highlighting common causes of claims, highlighting why risk management is important, identifying common causes of claims, which can quickly be put right and how to reduce the chances of things going wrong, looking at systems and processes to minimise the chances of things going wrong within a professional's practice. This is the final webinar in a series of four and looks at what to do when things do go wrong, focusing on two aspects, preventing policy problems and dealing with the problem itself.

It's a sad fact of life that Claimants are becoming increasingly litigious so, a claim might arise (meritorious or not) at some point, so it is important to know how to prevent policy problems and how to deal with the problem itself.

Preventing Policy Problems

It is it a complaint or a claim? It is important to understand the difference between the two, because how you deal with them will depend on whether the issue is a complaint or a claim.

A complaint is where a client complains about the level of service, they are not necessarily saying that they want money back, they are saying that you haven't met your professional standards. For example, they may say that you breached client confidentiality, but you haven't cost them anything as a result. A claim is a client saying "You've done this, you've cost me money, I want some money back".

If a client makes a complaint, you have to follow your firm's complaints procedure and those of your professional body. If a client makes a claim, or it is a circumstance which could give rise to a claim (which I will deal with in a moment), you have to notify it to your insurers.

So what is a circumstance, and what is a claim?

A claim is easier to identify. A client has told you that you have made a mistake, you've cost them money and they want compensation.

A circumstance is something that could give rise to a claim. You have to notify both of those to your insurers, usually within a very short timescale, depending on the terms of your policy. Problems arise where you don't notify your insurers. You have to be alive to circumstances and notify them promptly.

So what is a circumstance? It might be that you have identified a mistake that you've made in your client's work, but the client isn't yet aware. You have to tell the client, as you have a duty to do so (although see "dealing with the problem"). When you tell the client, the client is likely to make a claim because the mistake is likely to cause loss. That is a circumstance and has to be notified to the insurer, even though the client is not yet aware.

What about when a client for whom you've acted for a number of years, ceases to instruct you? Is that a circumstance? Well it might be. It might be that your firm's fees have gone up and the client has chosen to instruct a cheaper firm. It might be that the client has moved areas and has chosen to instruct a more local firm. It might be that the client's needs have become more sophisticated and they have chosen to instruct a bigger firm that can meet its more demanding needs, none of these would necessarily amount to a circumstance. But it might be that the client is unhappy with the level of service and has chosen to instruct a new firm because of its dissatisfaction.

So you have to look at the bigger picture when deciding if something is a circumstance that might need notifying. The best advice is, if you're unsure, speak to your insurance broker and they can assist you in deciding whether or not to make a notification.

Some clients are getting quite clever and can use complaints to obtain information which they can then use in making a claim.

Where that happens, we try and deal with the complaint first, and the claim afterwards, but that's not always possible. It's important that claims are notified to insurers promptly, because there may be a policy point if you don't notify promptly. Professional indemnity policies are claims made policies, so the policy that responds to the claim is the policy that is in force when the claim is made or the circumstance notified. So if a claim is made in one policy year, but not notified to insurers until the second policy year, there may be a policy point, particularly if the firm has changed insurers between policy year 1 and policy year 2.

If you become aware of a claim in policy year 1 and notify it in policy year 2, the insurer to whom you have notified, may not accept the claim, because it was made in policy year 1. The insurer in policy year 1 may not accept the claim because it wasn't notified to them in their year. You may find yourself uninsured. You will certainly have a battle with the insurers as to who should accept the claim.

There may be prejudice. If a claim is notified or you become aware of a circumstance, but you delay in telling the insurers and as a result of that delay, the opportunity to put things right is lost, and costs arise or the value of the claim increases substantially, the insurer may only agree to cover the claim to the extent that it would have been had it been notified promptly. Your firm would then have to bear the additional cost arising as a result of the delay in notification.

I mention surveying the firm. It's important to survey the firm, the whole firm, before you renew your policy, to make sure that any circumstances and claims are identified and notified to insurers before the end of the policy period, to avoid any policy issues arising. Many firms send out the questionnaire asking all staff if they are aware of any circumstances and claims, but what some firms don't do, is to make sure that they get all responses back. It's the people who don't send back the responses who usually have the problems.

So those are the policy issues. You don't really want to have a policy issue when you have got a claim, you want the solicitor appointed by your insurer to get on with dealing with the actual claim against you.

Dealing with the problem. These are the common questions and points that arise when dealing with a claim itself.

The first question that we often get asked is, what can I tell the client? There is a problem. What are you allowed to tell the client? You can tell the client the basic facts. But can you admit your mistake? Well, yes you can, but only with your insurers' consent. All too often I see cases where the professional has admitted to the client that they have made a mistake, but what the admission might do is to go further than the basic facts and that can cause insurance problems, because the admission may be wider than intended and may cause your insurers to take a policy point. So basic facts can be admitted, but no more, and get insurers' consent before making that admission.

Release of papers – clients often ask for their papers and they are entitled to certain papers, but not all. They are not entitled, as of right, to their working papers, for example. It may be difficult for you to work out what papers they are and are not entitled to. If you are going to release papers, then keep a copy and only release beyond that with insurers' consent. That's another good reason to get insurers involved, because the panel solicitor appointed can assist in determining what papers the client is and is not entitled to.

I mention on the slide, email and computer searches. It's not just paper documents that a client may be entitled to. If the claim is pursued, the client will be entitled to emails and documents held on your computer. There is a need to retain those documents and further detailed searches might need to be made.

So, when a claim is made, or is likely to be made, you need to ensure that your document retention system and your document destruction system are looked at so that documents are retained or not destroyed automatically, so that the documents that are relevant to the case are retained.

You will be required to retain the documents that relate to the claim so that the solicitors can see them, so that if the case goes to litigation, they haven't been destroyed.

All too often I've had cases where there has been a change of computer system and the old hard drive has been destroyed. If there is likely to be a claim, that will have to be retained.

You will need to give evidence to Court as to what documents have been retained and what searches you have made, you will need to search the computer systems, your emails, as well as your paper documents, so you will need to liaise with your internal systems about destruction of documents as soon as a claim appears likely.

Not mentioned on the slide, but also, if a member of staff worked on the file, and is leaving or has left, you will need to retain their contact details, so that they can be contacted.

I mention the need to act quickly. The professional negligence pre-action protocol requires you to acknowledge a notice of claim within a short period and there is then about three months to respond to the Letter of Claim. That might sound like a long time, but by the time you have received the letter, put it on the "too difficult" pile and then by the time you have got round to dealing with it, and eventually tell your broker, notify your insurers, a panel solicitor is appointed, quite a lot of time has passed. The panel solicitor then needs to obtain the documents from you, investigate it, ask questions, further information will usually be needed, and a lot of that three months has passed. The Claimant may well have become entrenched and hostile in that period. If more time is needed, it will be difficult to obtain. The sooner you deal with it, the sooner the solicitors are involved, the sooner they can pick up the phone and say "Hi, I'm here to help you", the less likely there is to be a policy problem, the more likely it is that we will be able to deal with the Claimant, the less likely the Claimant is to become entrenched and hostile and the easier the claim will be to deal with.

I hope that helps you get an idea of how to deal with policy issues and problems when a claim does arise. Hopefully, if you have followed the guidance in the first three webinars, these issues will not be relevant, but hopefully you now have a good idea of what to do if the worst happens and a claim is made against your firm.

Contributed by Karen Eckstein (Professional negligence solicitor and a CTA)

Deadlines

1 May 2020

- SME corporation tax due for periods ended 31 July 2019 (no instalments)
- New VAT fuel scale charges apply

3 May 2020

- Filing date for printed form P46(Car) for quarter ended 5 April 2020

7 May 2020

- File electronic VAT return for quarter to 31 March 2020 (deferred payment due by 31 March 2021)

14 May 2020

- File paper EC sales list for quarter ended 31 March 2020 due

Mid- May 2020

- HMRC should have contacted self employed and partnership members eligible for the Coronavirus Self Employment Income Support Scheme

19 May 2020

- PAYE/NIC/CIS/student loan payment liabilities due for month to 5 May 2020 if not paying electronically
- File monthly CIS return

21 May 2020

- File online EC sales list for quarter ended 31 March 2020 due
- Submit supplementary intrastat declarations for April 2020

22 May 2020

- PAYE, NIC and student loan liabilities to clear HMRC's bank account

31 May 2020

- 2019/20 P60 deadline for receipt by employees
- CTSA returns due for companies with accounting periods ended 31 May 2019

Other news

Business support finder tool

To help businesses identify what loans, tax relief and cash grants they are eligible for as a result of the coronavirus outbreak, the government has launched a new online tool support tool.

By answering a number of straightforward questions online, the tool then direct users to a list of the financial support that they may qualify for.

https://www.gov.uk/business-coronavirus-support-finder

Suspended enquiries

FT Adviser has reported that HMRC is suspending enquiries into taxpayers' affairs in response to the coronavirus pandemic. With capacity limits in the department, a government spokesman has stated that:

> "It is right HMRC does everything possible to protect individuals, businesses and the economy during this extremely difficult time. This includes prioritising work to support businesses and individuals."

During the lockdown HMRC will not be requesting information or expect timely responses, with some enquiries being suspended completely.

Clearly this does not mean that the enquiry will go away. Once the crisis is over, the enquiries will resume.

https://www.ftadviser.com/your-industry/2020/04/14/hmrc-pauses-investigations-due-to-capacity-issues/

Business Interruption Loan Scheme extension

On 3 April 2020, the Chancellor announced welcome changes under this loan scheme to support firms affected by the coronavirus crisis.

Under the extended scheme:

- all viable small businesses affected by COVID-19 will be eligible for support to help them continue to operate;
- banks:
  - will be able to make loans of up to £25m to firms with an annual turnover of between £45m and £500m.;
  - can no longer request personal guarantees for loans under £250,000;

- The government will:
  - continue to cover the first twelve months of interest and fees.
  - guarantee 80% of the loan

For loans over £250,000, personal guarantees will be limited to 20% of any amount outstanding on the loan after any other recoveries from business assets.

This will apply to finance already offered under the scheme, to ensure that all business owners receive the same level of government protection.

https://www.gov.uk/government/news/chancellor-strengthens-support-on-offer-for-business-as-first-government-backed-loans-reach-firms-in-need

Future fund for innovative companies

This May, together with the British Business Bank, the government will launch the Future Fund scheme to provide convertible loans of between £125,000 to £5 million to unlisted UK-based companies who:

- can attract the equivalent match funding from third-party private investors;
- have previously raised at least £250,000 in equity investment from third-party investors in the last 5 years.

These convertible loans may be a suitable option for businesses that rely on equity investment and are unable to access the Coronavirus Business Interruption Loan Scheme.

The money raised must be used solely for working capital purposes and not to repay borrowings, make dividend or bonus payments to staff, management, shareholders or consultants.

The Government will receive a minimum of 8% per annum (non- compounding) interest to be paid on maturity of the loan. The interest rate will be higher if a higher rate is agreed between the company and the matched investors.

These loans will automatically convert into equity on the company's next qualifying funding round, or at the end of the loan if they are not repaid. The loan will mature after a maximum of 36 months.

The scheme will initially be open until September 2020 with full details of the scheme due to be published shortly.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/880119/Convertible_Loan_Key_Terms_-__Final_Version_.pdf

Platform for Collaboration on Tax

The International Monetary Fund, Organization for Economic Co-operation and Development, United Nations, and the World Bank Group have established their first integrated website containing information on how low- and middle-income countries can strengthen tax systems and mobilise the domestic revenue they need to address some of their urgent development challenges—including the COVID-19 pandemic.

http://www.oecd.org/tax/platform-for-collaboration-on-tax-international-organisations-move-to-help-developing-countries-improve-tax-systems.htmTolley Guidance (2 April 2020)

OECD Tax Database

For those interested in what other tax authorities around the world have implemented in response to the COVID-19 pandemic, the OECD has produced a database.

This database provides a summary the emergency tax measures in force in both OECD member and non-member countries.

http://www.oecd.org/tax/tax-policy/tax-database/

Finance Bill 2019-21

The Finance Bill 2020 was published, with explanatory notes on 19th March and contains 105 clauses and 14 schedules, over 176 pages. It contains legislation that was published in draft back in July 2019 as well as the announcements made on Budget Day on 11 March 2020.

It has now passed its second reading in the House of Commons and has been sent to a Public Bill Committee for further scrutiny. The Committee is scheduled to report by Thursday 25 June 2020 at the latest.

https://services.parliament.uk/Bills/2019-21/finance/stages.html
https://services.parliament.uk/Bills/2019-21/finance/documents.html

Schedule 2 Part 2 of the Finance Bill renames Entrepreneurs’ Relief as ‘business asset disposal relief’. A technical note, published using its old name, explains the changes to Entrepreneurs’ Relief and giving details of the anti-forestalling measures.

The reduced £1 million limit applies to:

- transactions exchanging from 11 March, with no transitional rules;
- earlier transactions that did not reach completion before 11th March unless the contract was wholly commercial with no tax advantage motive;
- share reorganisations. share exchanges between 6 April 2019 and 11 March 2020.

Where the rules are unclear, taxpayers should apply to the non-statutory clearance service.

https://www.gov.uk/government/publications/reduction-in-the-lifetime-limit-for-entrepreneurs-relief-technical-note/reduction-in-the-lifetime-limit-for-entrepreneurs-relief-technical-note

Finance Bill consultations

Alongside the Bill, the government also published six consultations all open until just before the end of May.

1. Call for evidence on raising standards in the tax advice market

   (https://www.gov.uk/government/consultations/call-for-evidence-raising-standards-in-the-tax-advice-market)

2. Tackling construction industry scheme abuse

   (https://www.gov.uk/government/consultations/tackling-construction-industry-scheme-abuse)

3. Second consultation on preventing abuse of the R&D tax relief for SMEs

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

4. Taxation impacts arising from the withdrawal of LIBOR

   (https://www.gov.uk/government/consultations/consultation-on-the-taxation-impacts-arising-from-the-withdrawal-of-libor)

5. Notification of uncertain tax treatment by large businesses

   (https://www.gov.uk/government/consultations/notification-of-uncertain-tax-treatment-by-large-businesses);

6. Hybrid mismatch rules

   (https://www.gov.uk/government/consultations/hybrid-and-other-mismatches);

Business Taxation

Self-employment Income Support Scheme update (Lecture P1193 – 13.00 minutes)

Overview

The self-employed will be able claim a non-repayable grant, initially for 3 months, worth 80% of trading profits up to a maximum of £2,500 a month. Any grant received will be taxable as part of self-employment income and so could affect Universal Credit claims.

On 14 April 2020, HMRC updated their guidance on this scheme, stating that once the online system is ready, they will contact taxpayers by mid May 2020, aiming to make payments by early June 2020.

HMRC plan to invite eligible taxpayers to claim using the GOV.UK online service that they are developing. Those who cannot claim online will be given an alternative method but as yet, we have no further information on this.

HMRC has said that if an individual receives texts, calls or emails claiming to be from HMRC, offering financial help or a tax refund and asking them to click on a link or to give personal information, it is a scam.

Who is eligible?

The self-employed and members of a partnership are eligible provided their business has been adversely affected by COVID-19 and they:

- have submitted their 2018/19 tax return (or do so by 23 April 2020);
- traded in the tax year 2019/20;
- are trading when they apply, or would be except for coronavirus;
- intend to continue to trade in the tax year 2020/2021;
- have lost trading profits due to coronavirus.

Unlike the Coronavirus Job Retention Scheme, individuals can continue to work or take on other employment as well as voluntary work.

Trading profits must not exceed £50,000 and half of total income for either:

- tax year 2018/19; or
- average of the tax years 2016/17, 2017/18, and 2018/19.

Trading profits

The taxable grant will be based on average trading profit over the 3 tax years: 2016/17, 2017/18 and 2018/19.

Trading profit will be the profit reported on the tax return for each of these years, before deducting both losses carried forward from previous years and the taxpayer's personal allowance.

Where an individual has more than one trade, the results of these trades will be added together or, where one trade is profitable and the other loss making, netted off.

Averaging profits

To work out the average trading profit HMRC will add together all profits and losses for all tax years and divide by the number of years of trading.

Example 1

Trading results for a sole trader were as follows:

2016/17 £60,000 profit

2017/18 £55,000 profit

2018/19 £25,000 loss

The average annual trading profits are: £30,000 (£60,000 + £55,000 - £25,000)/3

Limited trading

Where the individual has not traded for three years, but has only one or two year's results, HMRC will base calculations on either:

- 2017/18 and 2018/19; or
- 2018/19 only.

Example 2

Trading results for the sole trader were:

2017/18 £25,000 of profit

2018/19 £45,000 of profit

The average annual trading profits are: £35,000 (£25,000 + £45,000)/2

Amending tax returns

Where a tax return is submitted after 26 March 2020, any changes will not be taken into account when working out eligibility or amount of the grant.

Loans covered by loan charge

The self-employed who have received payment for work in the form of a loan covered by the loan charge, may be able to claim the grant, but eligibility and average trading profits will be based on either the:

- average of 2016/17 and 2017/18;
- 17/18 if not self-employed in 2016/17.

Farmer averaging relief

HMRC will use the amount of profit before the impact of the farmer's averaging claims.

This information was as given by HMRC by 15 April 2020. We will be sure to update you as and when more information becomes available.

Big unanswered question!

The guidance so far says that traders must have lost trading profits due to coronavirus. None of the worked examples from HMRC to date show how this will work in practice if a trader is able to continue trading but has reduced income rather than a total closure.

Consider this example. Rosie has worked out that she has average profits (from 2016/17, 2017/18, 2018/19) from running her restaurant of £2,300 per month. Although she has been forced to close her restaurant, she is able to generate £1,000 per month by switching to supplying 'meals to the door' and food boxes to people in the local community.

How will the grant be calculated?

Will it be for £1,840 (£2,300 x 80%) for each of the three months? If that is the case, her monthly income is now £2,840 (£1,000 + £1,840) which is more than her averaged monthly amount. This cannot be right but there are no details to say otherwise.

It would seem likely that the grant should ultimately be restricted to her **loss** of £1,300 (£2,300 – £1,000) but how this would be achieved, we do not know. It could be affected at the time of the application, but at that stage Rosie would not know her relevant actual profits. Alternatively there could be some kind of a claw back in a later tax return. We will just have to wait and see.

https://www.gov.uk/guidance/claim-a-grant-through-the-coronavirus-covid-19-self-employment-income-support-scheme - history

Loan repayments versus undeclared income (Lecture B1191 – 17.10 minutes)

Summary – A lack of audit trail and an inconsistent story resulted in nearly £28,000 of bank receipts being taxable as undeclared consultancy income, rather than loan repayments as claimed.

Mubin Merchant submitted his 2015/16 tax return on 6 October 2016. HMRC opened an enquiry into that return on 27 March 2017 and later, on 4 July 2018, issued a closure notice maintaining that Mubin Merchant had understated his income for 2015/16 and that an additional amount of £11,624.25 of income tax in respect of the tax year was payable.

HMRC argued that receipts totalling £27,855, appearing as credits on his bank statements, were undeclared income arising from his consultancy work.

Mubin Merchant has appealed on the grounds that he had:

- only earned one-off consultancy fees of £4,070 as shown in his tax return together with an additional £1400 which had been carelessly omitted from that return;
- lent £40,045.70 to two companies and/or directors or shareholders of those companies and the credits of £27,855 shown in his bank statements were in fact repayments of the loans.

HMRC stated that Mubin Merchant's defence was inconsistent. At times he claimed that he was self- employed but later claimed that he was not; payments described as self-employed income were later described as loan repayment. Further, he lacked any records relating to the payments made to him to keep track of what was income and what was loan repayment.

Decision

Then First Tier Tribunal agreed that Mubin Merchant had been unable to provide any reliable evidence to support his claim that the amounts paid to him through his bank account were repayments of loans, or amounts of fees, or other income. Even at the hearing, the spreadsheet purporting to support his claim was still incorrect, more than two years after the HMRC enquiry started.

Had there been a clear audit trail shown using bank statements or otherwise, with which the taxpayer's evidence was consistent, a lack of formal documentary evidence would not have been not determinative. However, there was no clear audit trail and Mubin Merchant's evidence was far from consistent. The Tribunal did not accept that he had demonstrated that £27,855 shown as credits in his bank statements were not part of his taxable income.

The appeal was dismissed.

Mubin Merchant v HMRC (TC07627)

Gambling, not trading (Lecture B1191 – 17.10 minutes)

Summary – With no evidence to support any trading activity and witnesses who confirmed his gambling activity and lifestyle, the taxpayer was held not be trading.

Simon McMillan had not filed a tax return for any of the tax years 2006/07 to 2013/14, nor had he received notice to file a return. HMRC issued discovery assessments to Simon McMillan and charged interest for these tax years totalling £291,000. They argued that the frequency and regular nature of deposits into his bank accounts suggested he had been trading and that this money was taxable trading income. He produced no evidence to support his claim that he was a successful gambler and his claim of consistently beating the bookmakers was improbable.

Simon McMillan stated that the money was gambling winnings and so not taxable. His last declared income was around 1998 but since then he had not been employed or self-employed but instead lived off gambling winnings. He used an elaborate system of betting on British and European football results and high stakes private poker games, all for cash that he kept in a safe.

By 2010, he decided that his unhealthy lifestyle could no longer continue and he spent the next two years rearranging his life, supported by his partner. He gradually drew his accumulated funds from his safe and distributed the money into the various bank accounts that he had opened. The sums he paid in were based on what could be deposited easily on a single occasion via £20 banknotes into automated bank machines. He then purchased and restored a house. He had disposed of whatever records that he had at that time.

Most of the witnesses had seen Simon McMillan enter betting shops and one witness had hosted poker parties at his home where Simon McMillan usually won handsomely.

Decision

The First Tier Tribunal stated that as no trade had been identified by HMRC prior to the hearing, nor in any of the evidence that was presented at the hearing, the Tribunal could not infer that a trade was being run. Indeed that was the point made by the reviewing officer in an (unsent) letter dated 11 April 2018. At most, there was circumstantial evidence in the form of substantial bank deposits that invited further enquiry and explanation.

Although Simon McMillan was unable to produce any records relating to his gambling activity, he consistently denied that he had any other income. He made every effort to assist the tribunal and the judge had no reason to doubt his word.

The appeal was allowed.

Simon James McMillan v HMRC (TC07595)

Subsistence and training claim (Lecture B1191 – 17.10 minutes)

Summary – Claims for training and subsistence were disallowed as the taxpayer had been careless in both the lack of records kept and relying on 'Baggy', an unknown agent.

Neil Phillips was a foreman bricklayer. His appeal was against a closure notice issued by HMRC in respect of the income tax year 2016/2017 and related to two items.

1. He attended a course and claimed a deduction for the course expenses in his 2016/17 tax return. He claimed that the course updated his bricklaying knowledge base with contemporary practices and regulations and so related directly to his work as a foreman bricklayer;

2. He claimed £1250 in respect of subsistence. The amount claimed was £5 per day but there were no receipts or invoices to support the claim or other evidence supplied to indicate what it related to.

In addition, Neil Phillips also appealed against two penalties for:

1. Failure to comply with an information notice;

2. Careless inaccuracies in his self-assessment tax return for the tax year 2016/17.

On 7 October 2017 Neil Phillip's then agent wrote to HMRC saying that his firm had no involvement in the submission of Neil Phillip's 2016/17 tax return but gave an explanation for what had happened. Bizarrely, Neil Phillips was approached by 'Baggy', a person recommended to him, who proceeded to register himself as Mr Phillips' Tax Agent online with Mr Philips' agreement. However he then submitted a Tax Return for Neil Phillips but without obtaining any information from him about his income or expenses. Neil Phillips claimed that the first time that he became aware that a return had been submitted on his behalf was when he received HMRC's initial letter, in May 2017. He claimed that he could not have foreseen that 'Baggy' would falsify a Tax Return.

Unsurprisingly, 'Baggy' was untraceable and no details were given concerning the person who recommended "Baggy" to Neil Phillips.

This all seems rather strange, not least because the return included information that only Neil Phillips could have supplied. What did the Tribunal think?

Decision

The First Tier Tribunal concluded that Neil Phillips had failed to provide all of the information required by the Information Notice.

The Tribunal stated that expenditure incurred on a training course, which provided training on an activity which would represent an organic growth in the trade, should in principle be allowable unless it was otherwise clearly capital expenditure. However, the Tribunal received no documentary material concerning the contents of the course. With insufficient evidence to show that he had incurred expenditure on a relevant course, the expenditure was disallowed.

Under section 12B TMA 1970, a taxpayer must keep business records to support entries in their tax return. The Tribunal concluded that Neil Phillips had failed to keep these records. With no supporting evidence, his subsistence claim was disallowed.

The First Tier Tribunal was in no doubt that Neil Phillips was foolish in selecting “Baggy” and careless in doing so. They went further and questioned whether ‘Baggy’ ever existed. Could he really have ‘conjured these figures out of the air and accidentally hit upon the correct amounts seems most improbable’.

The Tribunal concluded that the claims were careless as, not only did they have doubts over whether ‘Baggy’ existed, but also Neil Phillips was unable to provide or retain evidence of the expenditure allegedly incurred. There was no reasonable excuse for this inaccuracy. They saw no reason to interfere with the penalty calculation.

Neil Phillips v HMRC (TC07630)

Corporate tax residency

During the COVID-19 outbreak, companies that are incorporated outside the UK, but normally controlled and managed in the UK so making them UK resident companies, need to take care that their resident status does not change.

If the country’s lockdown continues, and directors are unable to travel to attend UK board meetings, companies could cease to be UK resident for tax purposes with all that that entails. if permitted under a company’s articles of association, board meetings may be held with directors joining remotely. As reported in Taxation (26 March 2020):

> “This could potentially affect where the central management and control (or effective management) of those companies is located. It should be considered on a case-by-case basis as to whether a director who is not situated in the UK at the time of the meeting should join a particular board meeting, and ensure that the chair of the meeting is in the UK.”

Where the majority of non-UK directors are resident in a third country, such companies could become tax resident in another jurisdiction, and so fall to be taxed under that countries rules.

Erika Jupe Tax Journal -27 March 2020) suggests that:

> “As the spread of Covid-19 leads to widespread inability for travel, then precautionary measures are considered advisable. Non-UK incorporated companies which are treated as UK tax resident under the CMC test and which are faced with a possible loss of UK tax residency should consider whether the powers of the board could be delegated to other individuals who are UK resident for the duration of the outbreak to help ensure that CMC is still being exercised in the UK.”

It is possible that a non-resident company could be considered to have set up a permanent establishment in that country. Erika Jupe continues in her article:

> "The increase in employees working from home could cause local tax authorities to question whether a non-resident employer has established a permanent establishment (PE) in their local jurisdiction. This could be a particular concern where the employee has a senior role and/or enters into profit making contracts on behalf of the non-resident employer."

She adds that:

> "In the UK, if a non-resident company is being treated as trading in the UK through a PE, this would result in the income, profits and gains attributable to that PE being brought within the charge to UK corporation tax …… the UK resident individual would be treated as the UK representative of the non-resident company and the corporation tax liabilities of the non-resident company could be recovered from the UK resident individual".

On 22 April 2020, HMRC's International Manual at INTM120185) has been updated to explain HMRC's view on the matter and starts by saying that HMRC is very sympathetic to the disruption that the pandemic is causing. It seems that HMRC are of the view that temporarily holding board meetings in the UK will not necessarily be sufficient to switch the central management and control of a company to the UK. Clearly they must consider the bigger picture. The manual highlights that due to the presence of tie-breaker clauses in most double taxation agreements, it may well be that the company if not be treated as UK resident, even if management and control does move to the UK. A careful read of this manual is recommended for interested parties.

https://www.gov.uk/hmrc-internal-manuals/international-manual/intm120185

Corporate NR property businesses: introduction (Lecture B1192 – 14.30 minutes)

Basic principles

From 6 April 2020, any non-resident company carrying on a UK property business, or deriving income from UK property becomes subject to UK corporation tax, rather than income tax.

If the non-resident company does not have a 5 April year-end, as is likely, it will need to file both an income tax return and a corporation tax return for the period that straddles this date.

The transition to corporation tax is not considered to be a cessation event for income tax purposes which means, inter-alia, that there will be no balancing allowances or charges on capital allowances pools. An apportioned writing down allowance will be calculated to 5 April 2020, then the tax written-down values will be used for calculating writing down allowances under the corporation tax regime.

Any unrelieved losses can be carried forward from the income tax regime to the corporation tax regime. They will not be capped like normal corporation tax loss-carry forwards, but will be used in priority to corporate losses in future periods to reduce future rental profits as much as possible.

Exception

A non-resident company with a UK property business does not have to give notice of chargeability to corporation tax if it reasonably expects that:

1. All income chargeable will suffer (20%) income tax deduction;
2. There will be no chargeable gains for the period.

As the rate of UK corporation tax is now expected to remain at 19%, even if not required to notify chargeability, it may be (slightly) beneficial to do so. Any excess income tax suffered would be refunded.

In making the decision the company must take into account corporation tax compliance costs based on possibly having to file accounts and an i-XBRL CT600 as well as the potential complexity of corporation tax rules compared to income tax (these are covered in a separate session).

Filing and reporting requirements

Non-resident companies will need to register for corporation tax self-assessment. HMRC is writing to those it believes are affected by the change and registering these companies itself.

Agents may need to get authority to act for the company in corporation tax matters and register this with HMRC.

The company will need to file a corporation tax return (CT600) within 12 months of the end of the chargeable accounting period, including tax computations in iXBRL format (using third-party software).

They will also have to file accounts with HMRC, the form of which will depend on the circumstances.

If audited accounts are prepared for the company these must be filed along with management accounts for the property business. These audited accounts only need to be in iXBRL format if they fall within a recognised taxonomy (UK GAAP, UK IFRS, US GAAP etc) otherwise a PDF can be filed.

If no audited accounts are prepared, the company only needs to file what is required by legislation (iXBRL-tagged P&L for a property business) but will need to explain on its CT600 why no full accounts are being filed.

Payment dates

Non-resident companies will be used to paying the income tax due on 31 January following the end of the tax year.

The general rule for corporation tax is that the tax is due 9 months after the end of the chargeable accounting period.

Companies with larger profits must make instalment payments, but non-resident companies will be exempt for their first year if they were not within the scope of CT in the previous period (i.e. they did not have a UK permanent establishment nor made a profit from dealing in UK land).

If profits (including any gains) exceed £1.5 million p.a. (divided by the number of companies in the same 51% group), tax is paid on account in 4 instalments. The first is due by the 14th day of the 7th month then at three month intervals after this.

For example, a company with a 31 March year-end would pay instalments by 14 October and 14 January during the period, then 14 April and 14 July following the end of the period.

If profits (again including any gains) exceed £20 million p.a. (divided by the number of companies in the same 51% group), the instalments are accelerated. The first is due by the 14th day of the 3rd month of the period, then at three month intervals after this, so all estimated tax is paid within the accounting period.

There are special rules on instalments dates for short accounting periods which are not covered in this session.

Any balance of tax owed above the instalments is due within 9 months after the end of the accounting period. Interest accrues on the amount that each instalment should have been (with hindsight having finalised the liability) and how much was paid on each date. This interest is a deductible expense for corporation tax purposes.

Transitional year

If the company does not have a 5 April year-end, some of the profit for an accounting period will be liable to income tax and some liable to corporation tax.

Example

A Jersey company has a year ended 31 March. It derives UK property income in its year-ended 31 March 2021.

Five days' profit of this period (1 – 5 April 2020) will be liable to income tax and 360 days' profit (6 April 2020 – 31 March 2021) will be liable to corporation tax.

Numerical example

A non-resident property company has following property business profits

- Year to 31 December 2019 £150,000
- Year to 31 December 2020 £250,000
- Assume no capital allowances are claimable

Income tax profits for year to 5 April 2020

- 270/365 x £150k = £110,959
- 96/366 x 250k = £65,573
- Total profits £176,532
- Paper income tax return (SA700) required by 31 January 2021

Corporation tax profits for the period 6 April 2020 to 31 December 2020

- 270/366 x £250k = £184,426
- CT600 needs to be filed by 31 December 2021

Capital allowances – an example

A Guernsey company has brought forward capital allowance balances at 1 January 2020 of

- General pool £78,000
- Special rate pool £42,000

What are the writing down allowances claimable for the 2019/20 income tax return and the CT return to 31 December 2020?

	General pool	**Special rate pool**	**Total**
Income tax return:			
Balance b/fwd	78,000	42,000	
WDAs:			
18% x 78,000 x 96/366	(3,683)		3,683
6% x 42,000 x 96/366		(661)	661
Income tax WDAs			4,344
Balance c/fwd	74,317	41,339	
Balance c/fwd	74,317	41,339	
WDAs:			
18% x 74,317 x 270/366	(9,869)		9,869
6% x 41,339 x 270/366		(1,830)	1,830
Corporation tax WDAs			11,699
Balance c/fwd	64,448	39,509	

Contributed by Malcolm Greenbaum

Corporate NR property businesses: Other issues (Lecture B1193 – 29.28 minutes)

Calculation of rental profits

The calculation of taxable rental profit or loss for corporation tax purposes is similar to income tax rules. The major difference is in the relief for interest.

Under income tax rules, interest on loans relevant to the property rental business are deductible in arriving at the rental profit.

Under corporation tax rules, interest is <u>not</u> a deductible expense against rental income, but dealt with separately under the 'loan relationship rules'. They will still get relief but in a separate part of the return. There are also restrictions for late paid interest in some circumstances (e.g. lender is an individual and interest not paid within 12 months of the end of the company's AP).

Corporation tax loss reliefs

Rental losses under income tax rules can only be carried forward and offset against future rental from that property business.

<u>Corporate</u> rental losses and non-trade loan relationship deficits can be offset in the following ways:

1. Reduce total income chargeable to UK corporation tax in the same period (including chargeable gains);
2. Group relieve to another '75% group company' with profits chargeable to UK corporation tax;
3. Carry forward against future total profits (including chargeable gains).
    - Set off of losses brought forward is limited to £5m plus 50% of profits above £5 million against which loss will be offset (group wide limits) in any one year
    - This cap does not apply to income tax losses carried over from the old regime – they will be fully deductible against future profit without restriction

Corporate rental losses brought forward must first be used by the company that incurred them in a later period

- Then any excess can be group relieved against profits of another 75% group company in the same brought forward period;
- Subject to the group limit above.

Corporate interest restriction

One major change for non-resident companies might be the imposition of a limit on the maximum deduction for interest expense loans used in the UK property business.

This could lead to disallowed interest expense if it exceeds the 'interest allowance' for the period (which has a minimum value £2 million).

Disallowed interest carried forward and can be reactivated in future periods if interest expense is less than the interest allowance in that period.

If interest expense is less than the interest allowance in a period, the excess allowance can be *carried forward for up to 5 years and used to increase interest capacity in later periods, but the* company must file a full CIR return to do this (see below).

If there is any chance that future interest expense may be affected by CIR, it is advisable to file an abbreviated return (which just sets out the UK group structure and a statement that there is no disallowance this period). It then allows company to come back and file a full return up to 5 years later (to activate the brought forward unused interest allowances) should this be necessary.

Basic CIR calculations

Interest allowance can be calculated using either:

1. Fixed ratio rule;
2. Group ratio rule.

With a minimum value of £2m (group-wide where relevant)

1. Fixed ratio rule – smaller of:
   a) 30% (the 'fixed' part) x Aggregate UK companies' **tax-EBITDA***
   b) Adjusted worldwide net-group interest expense **("ANGIE")**
2. Group ratio rule – smaller of:
   a) Qualifying worldwide net-group interest expense **("QNGIE")** ÷ worldwide group **EBITDA** x 30% x Aggregate UK companies' **tax-EBITDA***
   b) QNGIE

<u>Example</u>

• Aggregate net tax-interest of UK group companies	£50m
• Aggregate tax-EBITDA of UK group companies	£100m
• (Worldwide) Group EBITDA	£200m
• ANGIE	£95m
• QNGIE	£90m

Interest allowance calculation

Fixed ratio method - max allowable interest is the lower of

1. 30% of aggregate UK tax-EBITDA (100m)30m
2. ANGIE 95m

- i.e. 30m
- Under this method, (50 – 30) 20m of the interest would be disallowed.

Group ratio method - Group ratio % = QNGIE (excludes related party interest) ÷ (Worldwide) Group EBITDA:

– i.e. 90 ÷ 200 = 45%

Max allowable interest is the lower of

1. 45% x aggregate UK tax-EBITDA (100) 45
2. QNGIE 90

- i.e. 45m
- Using group ratio gives higher allowance. Only (50 – 45) £5m interest would be disallowed

Reporting company

A return will be required if HMRC nominates a reporting company (within three years of the period end – which it will do if there is any disallowance under the rules), or a group elects a reporting company (which must be done within 12 months of the period end).

The reporting company is responsible for collating the necessary information and completing and filing the CIR return.

If other group companies consent, reporting company allocates any disallowance as it sees fit, otherwise the disallowance is allocated pro-rata to each company's net-tax expense.

Once a reporting company is appointed (by election or by HMRC), it will have an obligation to file a return by later of:

- 12 months after period end, or
- 3 months from its appointment.

The return can be amended within 3 years from the period end (5 years if replacing an abbreviated return with a full return) or, if later, 3 months from the reporting company's appointment.

CIR variables

UK net-tax interest expense

- Aggregate of interest expense subject to UK CT net of interest income which is subject to UK CT in the period
- Would include capitalised interest if immediate deduction allowed for it (e.g. on tangible fixed assets)

ANGIE

- Starting point is accounting net interest expense in accounts
- Add interest capitalised in period (can make election to only include capitalised interest when recognised for tax purposes where taxed on a GAAP basis – e.g. intangible assets and development property stock)
- Ignore preference dividends recognised as interest expense

QNGIE

- ANGIE minus interest payable to related parties that are not consolidated
- Includes companies that would be consolidate if not for an exemption, common participation in management, control or capital, and common 25% interest between the parties or held by 3rd party in both

UK tax-EBITDA

- Tax adjusted EBITDA (e.g. add back entertaining, capital items in P&L, accrued pension expense etc., ignore CAs)
- Include capital gains
- Exclude losses from other periods and effects of special tax reliefs (e.g. RDEC, R&D enhancement, patent box etc.)
- Ignore special pension contributions needing to be spread into future periods
- Aggregate of all UK-liable profits and losses (so include LBITDA for an individual group company but if overall group LBITDA, call it zero)

Worldwide group EBITDA

- Accounting figure so not tax-adjusted
- But ignore RDEC, revaluation gains/losses, grant income that funds capex
- Ignore accounting gains/losses on disposal, replace with [proceeds – cost]

Public infrastructure exemption

An exemption can be claimed from the CIR rules for 'qualifying infrastructure companies' if they meet certain conditions. This might be difficult for for non-resident companies (see below).

If PIE is claimed, Tax-EBITDA is assumed to be zero (so doesn't affect CIR for other group companies) and the company's UK net tax-interest expenses is ignored in the CIR calculations.

A Qualifying Infrastructure Company (QIC) must derive its income and the value of its assets from qualifying infrastructure activities (QIA) i.e. it provides a public infrastructure asset or carries on any other activity that is ancillary to, or facilitates the provision of a public infrastructure asset.

A building or part of a building, is a public infrastructure asset if the company or another member of the worldwide group carries on a UK property rental business; and

- The building, or part, is or is to be let (or sub-let) on a short term basis (lease term ≤ 50 years to unrelated parties;
- Expected economic life of the building is ≥ 10 years; and
- The building or part is recognised on the balance sheet of the PIE company or an associated company, which <u>itself must be subject to UK corporation tax on all sources of income.</u>

Derivatives and hedging

A non-resident company might hold currency or interest rate derivatives as hedges for its UK property income (e.g. currency forward contracts to hedge fx risk on rents, or interest-rate swaps to hedge interest-rate risk).

FRS 102 and IFRS require derivatives to be fair-valued. If not using hedge-accounting the gains and losses on revaluing the derivative are recognised in profit and loss.

If using cash-flow hedge-accounting, gains and losses are recognised in OCI until the hedged item affects profits, then recycled to P&L. Sometimes, no recycling will occur (e.g. swap from variable to fixed rate).

Primary UK tax law requires derivative gains/losses in P&L to be taxed/deducted. Gains losses in OCI are only taxed if they will not be recycled to P&L later, other they will taxed when recycled.

If using derivatives as a hedge, a company can elect to use 'disregard' regulations, to ignore gains and losses in P&L (or OCI if not going to be recycled) until the hedged item affects profits.

Once an election is made, it cannot be revoked for 2 years. Once revoked, a company cannot elect to use the disregard rules for a further 2 years.

Contributed by Malcolm Greenbaum

Digital Services Tax

Where very large companies generate revenue from UK individuals using search engines, social media services and online marketplaces, the new Digital Services Tax imposes a 2% tax on such digital revenue.

March's Budget confirmed that that the new Digital Services Tax would come into force on 1 April 2020. HMRC has produced a new manual to provide guidance in this new area that covers what is meant by digital services activity and revenue as well as users and identifying revenue of UK users.

Further content will be provided in the coming weeks to provide more detail on the role and responsibilities of the responsible member, as well as further details of the administration and compliance framework that applies for Digital Services Tax.

This guidance reflects the legislation contained in the Finance Bill as introduced to Parliament. As the Finance Bill is potentially subject to amendment during passage through Parliament the guidance should be treated as draft until Royal Assent has been received.

www.gov.uk/hmrc-internal-manuals/digital-services-tax

HMRC has also issued guidance to help businesses and their agents. This includes:

- Guidance for deciding whether a business needs to register and how to register
- Guidance for working out and paying the Digital Services Tax due
- Guidance on how to submit a Digital Services Tax return

https://www.gov.uk/topic/business-tax/digital-services-tax

VAT

VAT support during the crisis (Lecture B1194 – 14.06 minutes)

VAT payments deferred until end of June

The Chancellor announced a three-month VAT payment deferral on 20 March to support businesses during the coronavirus crisis. All businesses that are registered for VAT have the option to defer all VAT payments due to HMRC between 20 March and 30 June. Businesses will have until 31 March 2021 to pay any VAT deferred. The first period the concession applied to was the February 2020 return, payable by 7 April 2020. It will also extend to March and April returns. There will be no interest or default surcharges on the deferred payments. The deferral also applies to payments on account for larger businesses. However, cash flow must be closely monitored in anticipation of the March 2021 settlement date.

Note - Businesses do not need to inform HMRC if they wish to defer payment. They can opt in to the deferral by not making VAT payments due in this period. All VAT returns must still be submitted on time.

Direct debits. HMRC has confirmed that if you normally pay VAT by direct debit you should cancel your direct debit mandate with your bank if you are unable to pay. This must be done in advance of the payment date to ensure that HMRC does not attempt to automatically collect it when it receives your VAT return.

Annual accounting scheme. The deferral period also applies to monthly or quarterly payments on account with the annual accounting scheme. The scheme payments are based on the previous year's VAT liability.

Payments on account

There are two main situations when a business will make VAT payments on account, rather than settle its liability on a monthly or quarterly return ie the annual accounting scheme and the payments on account scheme for large payers.

The large payer scheme applies to any business with annual VAT payments that exceeded £2.3m in a specified 12-month period. The 12-month period depends on the VAT quarters of the business eg for a business on calendar quarter VAT returns, it is based on total VAT payments made to 30 September each year. Payments on account are made in months two and three of a VAT period, with the balance due in the normal way ie one month plus seven days after the end of the period. There are two important cash flow saving tips for large payers:

1. The VAT payment holiday period until 30 June also applies to payments on account with the large payer scheme;

2. If a business thinks that the payments are too high because of a lower expectation of sales this year due to the coronavirus problems, it can apply to HMRC to have the payments reduced, ie to help cash flow. See https://www.gov.uk/guidance/vat-payments-on-account

The same comments apply to the annual accounting scheme concerning the holiday payment period and also the opportunity to reduce monthly or quarterly payments on account with the scheme that are based on the previous year's VAT liability.

Paying VAT by direct debit

Since 1 April 2012, businesses have been required to pay their VAT electronically, earning an extra seven days grace compared to the old days of sending a cheque in the post to HMRC's office in Southend.

This means that the payment date for the December 2019 return was 7 February 2020.

However, a further delay of three working days can be earned if payments are made by direct debit. And if the days between the 7th and 10th of the payment month include Saturdays or Sundays, then these days are ignored, so a potential extension to five calendar days compared to other payment methods.

Payment Support Service (PSS)

When cash is in short supply, many businesses will be faced with the decision as to whether they pay their suppliers on time (to keep the flow of goods coming into the business) or the quarterly VAT return. The PSS used to be called the BPSS with the 'B' standing for 'business' but changed its name quite recently. The challenge is to contact the PSS before the due payment date for the VAT return in question because an agreed time-to-pay deal will avoid any potential default surcharges being levied if the business complies with the agreed terms.

At the time of writing, the current opening hours are Monday to Friday 8am to 4pm – telephone number 0300-200-3835.

The website link advises taxpayers to 'call the PSS if you cannot pay in full before your payment deadline.' Practical tips are as follows:

- Try and pay some of the VAT liability on time ie showing a genuine commitment to pay and then asking for the balance to be paid through an extended agreement;

- Be aware that a condition of a time to pay agreement will almost certainly be that all future returns and payments must be made on time. The PSS facility is a temporary option to help a cash flow problem.

Contributed by Neil Warren

Cash flow savings for VAT **(Lecture B1195 – 15.48 minutes)**

Deregistration opportunity?

There has been some confusion among accountants about whether a business that has been forced to temporarily shut its doors because of the coronavirus crisis can deregister from VAT if expected sales in the next 12 months will be less than £83,000. The answer to this question requires a precise review of the legislation and the issue of suspended trading. To cut to the chase, VATA1994, Sch 1, para 4(1), confirms that a business can deregister if taxable sales in the following 12 months are expected to be less than £83,000 and HMRC (the Commissioners) accepts this will be the case.

But section 2 of the same paragraph then confirms that the taxable supplies figure is not reduced because the business "will suspend making them for a period of 30 days or more."

HMRC's interpretation of the legislation is recorded in VAT Notice 700/11, para 3.2:

> "HMRC will not allow you to cancel your registration if the reduction in your turnover is the result of your intention to stop trading or suspend making taxable supplies for 30 days or more in the next 12 months."

In reality, it makes sense to remain VAT registered in any suspended trading period because input tax can be claimed on expenses but with no output tax on sales. The £83,000 threshold can then be reviewed when trading starts again.

Deregistration pitfalls

Even if your clients are still able to deregister after passing the suspended trading hurdle, there are other major issues to consider before submitting form VAT7 to HMRC:

- Output tax will be due on all stock and assets owned on the date of deregistration if the items are standard rated and input tax was claimed when they were purchased;
- There is a de minimis figure if the total output tax payable on all stock and assets is less than £1,000;
- The basis of paying output tax is the market value of the asset on the date of deregistration ie the calculations take account of wear and tear, depreciation, out-of-date or obsolete stock.

A property with an option to tax election and where input tax was claimed when it was purchased will come within the output tax rules for stock and assets – this would be a very expensive outcome.

Delaying tax points

Unless a business uses the cash accounting scheme, it will usually account for output tax when a sales invoice is raised. The invoice must be raised within 14 days of either goods being supplied or services being completed – the latter creates what is known as an 'actual tax point'. But if this 14-day deadline is missed, the 'basic tax point' takes effect, which is the earlier completion or supply date.

However, many invoices are raised for continuous supplies of services and in such cases, the tax point is the earlier of the invoice or payment date.

Example

John is registered for VAT and submits returns on a calendar quarter basis; he does not use the cash accounting scheme. He sold a machine to Jane on 30-day payment terms for £100,000 plus VAT. The machine was delivered on 27 March 2020. As long as John raises his invoice before 11 April 2020, the invoice date will be the tax point for the supply. So, if he delays invoicing until 1 April or later but before 11 April, he will not pay output tax until the June rather than March quarter.

It is important that John's contract specifies payment is due 30 days after the invoice date and not the end of the month following 30 days ie the April invoice date is not delaying payment for the machine until the end of May rather than April.

Cash accounting scheme

An unfortunate outcome of the coronavirus will inevitably be that many businesses will permanently lose sales and have to operate on reduced trading levels. However, this might open the door for a business to join the cash accounting scheme because the joining threshold is based on future rather than historical sales. The scheme means that output tax is not included on a return until customers pay their dues, although input tax cannot be claimed until suppliers are paid.

To quote from notice 731, para 2.1, a business can join the scheme if "you expect the value of your taxable sales in the next year will be £1.35m or less".

Example

ABC Management Consultants – joining the cash accounting scheme

The partners expect the following sales in the next 12 months:

- Consultancy fees charged to UK customers £1m excluding VAT;
- Consultancy fees charged to overseas business customers £400,000;

The income from overseas customers is outside the scope of VAT under the general B2B rule, ie the place of supply is the customer's country. The relevant figure for the cash accounting scheme is therefore £1m ie less than the joining threshold of £1.35m.

Will there be a problem with HMRC if the joining threshold is exceeded in the first year of scheme membership because sales are better than expected? The forward-looking test is also relevant with the flat rate scheme and annual accounting scheme. The answer is 'no.' As long as the business had a logical basis for arriving at its expected sales figure, then HMRC will not back pedal and seek to retrospectively cancel the scheme benefits.

Leasing vehicles

A common decision made by a business with cash flow difficulties is to lease vehicles rather than buy them as an outright purchase. The implication of leasing an asset is that VAT is usually charged on monthly hire payments made to the leasing company rather than when the asset is initially purchased by the business. The leasing company will often issue an annual tax invoice in advance, which serves as evidence for the lessee to reclaim input tax on each monthly payment.

A potential winner with leasing cars is that 50% of the input tax can be claimed on the monthly payments ie recognising that most vehicles are available for private use. This is a much better VAT result than buying a vehicle, where a 100% input tax block applies if it is intended to make it available for private use.

Default surcharge – potential VAT saver with part payment

A small business with annual taxable sales of less than £150,000 gets two lifelines with late VAT returns or payments in a 12-month period. It firstly gets a polite letter from HMRC offering help and support; it then receives the usual surcharge liability notice (SLN) for a second offence, confirming that any late payments in the next 12 months thereafter will lead to a penalty of 2% of the tax unpaid by the due date, rising to 5%, 10% and then 15%. A business that is not classed as small for this part of the legislation gets the SLN for its first offence.

However, if the surcharge payable for either the 2% or 5% penalty periods is less than £400, then it is waived. So, if the tax owed on a return is £30,000 and a 2% surcharge will be levied on any late payment, then a part payment on time of £10,001 will avoid a surcharge ie £19,999 x 2% is less than £400. This is because a surcharge is based on unpaid tax by the due date, not the full amount of VAT included in Box 5 of the return.

Contributed by Neil Warren

MTD for VAT digital links (Lecture B1191 – 17.10 minutes)

Remember, under MTD for VAT, there must be a digital link between software and/or spreadsheets; the data cannot be transferred manually between products.

Businesses were originally given a year from the launch of MTD to have these digital links in place, giving them until 1 April or 1 October 2020, depending on their original MTD start date.

HMRC has now announced that they have delayed the requirements for businesses to have 'digital links' within their recordkeeping by a year. In order to ease the burden during the Coronavirus pandemic, businesses now have until the first VAT return period starting on or after 1 April 2021 to implement these links.

Duty and VAT waived on vital medical supplies

The Chancellor Rishi Sunak has waived customs duty and import VAT on vital medical equipment including ventilators, coronavirus testing kits and protective clothing.

He stated that:

> "Waiving import taxes on vital medical equipment such as ventilators will speed up and increase the supply of critical items going to our frontline health workers."

https://www.gov.uk/government/news/chancellor-waives-duties-and-vat-on-vital-medical-imports

R&C Brief 1 (2020): VAT liability of digital publications

In February we reported on the Upper Tribunal's decision that certain digital versions of the Times and The Sun as well as their Sunday papers should be zero rated for VAT as they were equivalent to the corresponding printed newspapers (News Corp UK & Ireland Limited v HMRC [2019] UKUT 0404 (TCC))

R&C Brief 1 published by HMRC now confirms that they have been granted permission to appeal this decision to the Court of Appeal and in the meantime they will continue to treat such supplies as standard-rated.

https://www.gov.uk/government/publications/revenue-and-customs-brief-1-2020-vat-liability-of-digital-publications-upper-tribunal-in-news-corp-and-ireland-ltd

Occupational health (Lecture B1191 – 17.10 minutes)

Summary – Where services were delivered for a fixed price from an onsite or mobile clinic, this was a single, exempt supply. However, where services were supplied on a bespoke basis, these were predominantly exempt supplies with a few exceptions being standard rated.

RPS Health In Business Limited and RPS Consulting Services Limited, referred to jointly as RPS, provided a variety of occupational health services to clients, including medicals, heath surveillance, vaccinations, sickness absence management and drug/alcohol testing.

Following a presentation by KPMG, acting for RPS, HMRC accepted that RPS was providing a single indivisible economic supply of services, made up of two or more elements which were so closely linked that it would be artificial to split them.

Both parties were therefore of the view that there was a single supply. However, they disagreed as to its classification:

- HMRC argued that that services were exempt medical supplies (Sch 9, Group 7, Item 1, VATA 1994), being "services consisting in the provision of medical care".

- RPS argued that they were making standard rated supplies of information and advice to employers.

Both parties accepted that some services fell either side of the line:

- HMRC accepted that pre-employment medicals, pension scheme medicals, ergonomic assessments, laboratory services and administration charges were all standard rated;

- RBS accepted that executive medicals were exempt.

Despite this, the parties jointly submitted that the First Tier Tribunal could not consider the single/multiple supply question and asked the Tribunal for a decision on whether the overarching supply was exempt or standard rated.

Decision

The Tribunal disagreed with the parties request, finding that a tribunal could not decide an appeal on a basis that it considered to be wrong in law, and so were able to consider and decide whether RPS was making separate single supplies, or a multiple supply. Considering each of the single supplies in turn was a complex process, resulting in an extensive case summary running to over 90 pages.

In summary the First tier Tribunal substantially agreed with HMRC deciding that:

- where RPS provided an occupational health practitioner to deliver a range of services for a fixed price from an onsite or mobile clinic, this was a single indivisible economic supply of exempt services, being made up of elements which are so closely linked that it would be artificial to split them;

- otherwise, RPS provided separate single supplies on a bespoke basis, vast majority of which were exempt. Ill-health retirement medicals, medico-legal services, administration charges and training courses were standard rated.

RPS Health In Business Limited and RPS Consulting Services Limited v HMRC (TC07643)

Action Day Planner no longer a book (Lecture B1191 – 17.10 minutes)

Summary – The Active Day Planner was held not to be a book as its main function was to be written in rather than read. The First Tier Tribunal's analogy between the planner and a book of crossword puzzles or a GCSE revision guide could shed no light on whether, applying the statutory provisions, the planner was a "book."

Thorsteinn Gardarsson operated his business from Iceland and sold his Action Day Planner in the UK through Amazon. He began selling his product into the UK on 26 July 2013.

He argued that his planner was a zero rated book, and not a standard rated. He marketed it as a time management tool developed to teach and instruct people time management skills. The first 16 pages of the planner contained text setting out a narrative of the ethos for effective time management. The remainder of the planner was taken up with 52 double page planners.

HMRC believed that these supplies were standard-rated, suggesting that he should be registered for VAT in the UK. Maintaining that his planner was a zero-rated book, he nevertheless applied for voluntary registration and was initially registered with effect from 1 July 2017.

Still believing that the planner was not a book and should be standard rated, HMRC believed that he should have been VAT registered in the UK from when he started trading and so they issued an assessment for the long first prescribed accounting period 26 July 2013 to 30 June 2017 (when he actually registered) for the sum of £158,024.77. A late notification penalty of £33,000 and an inaccuracy penalty of £2,000 were also issued.

On appeal, the First Tier Tribunal concluded the planner was a zero rated book on the basis that:

- the case *Colour Offset Ltd [1995] STC 85* was binding on their decision. That case concerned the interpretation of the word "books" for VAT purposes and concluded that the ordinary meaning of the word 'books' should be used;

- within that ordinary meaning was any item with the physical characteristic of a book (i.e. as a minimum covers, pages, text and/or illustration) which had as its main function informing/educating or recreational enjoyment;

- the Action Day Planner was similar in nature to the school books and other educational tests in question and answer format or someone completing a crossword puzzle, both items listed in HMRC's Notice 701/10 as qualifying as books.

The Tribunal went on to consider the issue of registration stating that where a non-established person meets conditions A – D as set out in Schedule 1A VATA 1994, there is a liability to be registered for VAT with no turnover threshold unless, at the request of that person, HMRC consider it fit to exempt that person from the liability to be registered. On that basis, and with no request for exemption from registration, the correct VAT registration date was 26 July 2013. They concluded by stating that failure to register as required under Schedule 1A strictly makes the taxpayer liable to a penalty for failure to comply with an obligation specified in Schedule 41 Finance Act 2008. However, the penalty payable was a tax-geared penalty and, with no tax due, the penalty in this case was therefore nil.

HMRC appealed to the Upper Tribunal arguing that the First Tier Tribunal failed to correctly analyse or apply the decision of the High Court in *Colour Offset*.

Decision

The Upper Tribunal referred back to Colour Offset that the First Tier Tribunal had previously stated was binding on their decision. This case concerned a "conventional pocket diary" with spaces for recording events, tasks and engagements as well as pages with additional diary-like information to refer to. The judge concluded that the zero rating legislation's intention was to avoid tax on reading, not on stationery. The Upper Tribunal concluded that even if Colour Offset did not state expressly how an item that can both be read and written in should be classified, some sort of "tie breaker" was needed and stated that general principles of VAT law would require the classification to be determined by reference to the "main function" of the item.

The Upper Tribunal concluded that the First Tier Tribunal had erred in law by focussing on VAT Notice 701/10. HMRC practice does not have the force of law and so no conclusion of law could be drawn from the fact that HMRC's practice is to treat supplies of crossword books or exam study guides as zero-rated. The First Tier Tribunal did not apply the "main function" test articulated in Colour Offset. Colour Offset does not refer at all to whether the main function of an item is to inform or educate; nor does it refer to recreational enjoyment; there is no mention of crossword books or exam study guides at all.

The Upper Tribunal went on to concluded that the main function of the Action Day Planner was for it to be written in, rather than read, making it a standard rated supply. The 52 double pages of space for writing were much more significant than the text for reading. Additionally, they stated that a calendar tended to suggest that the main function of the planner was to hold written entries relating to a particular year, to be replaced annually for the next year.

The planner was not a zero rated book under Item 1 of Group 3 of Schedule 8 VATA 1984.

Having made their decision, the Upper Tribunal have referred the case back to the First Tier Tribunal saying that, it may now be necessary to consider the quantum of the assessments, whether Mr Gardarsson had a “reasonable excuse” for failing to notify his registrability to HMRC, whether the inaccuracy in his return for 08/17 was due to “carelessness” and whether the various penalties and assessments were made in time. The Tribunal stated that they had not been referred to any relevant evidence on these matters and so were in no position to make findings themselves. The Upper Tribunal referred the appeals back to a differently constituted First Tier Tribunal, who must determine those appeals on the footing that the Action Day Planner is not a “book”.

HMRC v Thorstein Gardarsson T/A Action Day A Islandi [2020] UKUT 0099 (TCC)