Tolley®CPD

May 2021

Disclaimer

Tolley CPD takes every care when preparing this material. However, no responsibility can be accepted for any losses arising to any person acting or refraining from acting as a result of the material contained in these notes.

CONTENTS

Personal tax

Press release: NICs holiday for employers of veterans

While the vast majority of ex-military personnel transition successfully into civilian life, some veterans can struggle with the adjustment.

To encourage employers to take on veterans the Government has confirmed the National Insurance contributions holiday for businesses who employ armed forces, which came into force on 6 April 2021.

This holiday allows employers to claim National Insurance contributions relief for veterans they have hired during their first year of civilian employment after leaving the armed forces.

The relief is available to all employers of veterans regardless of when the veteran left the regular armed forces, providing that they have not been employed in a civilian capacity since leaving service. The relief will be available for all qualifying veterans each time they leave HM Armed Forces.

A person qualifies as a veteran if they have served at least one day in the regular armed forces. This includes anyone who has completed at least one day of basic training.

New legislation to implement this measure will be introduced formally in new sections 9C and 9D to the Social Security Contributions and Benefits Act 1992.

https://www.gov.uk/government/news/tax-cut-for-employers-of-veterans-brought-in

New homeworking claim required

Where an employee's employer does not reimburse homeworking costs, it is not normally possible to claim tax relief for any additional costs of working from home.

However, back in March 2020, a parliamentary question was put to the Chancellor of the Exchequer as to whether workers who had been advised to work from home during the COVID-19 outbreak were eligible to claim tax relief for:

(a) heating and lighting the room they work in; and

(b) the cost of business telephone calls.

It was confirmed that such employees were eligible to claim a fixed amount of £4 per week up to 5 April 2020, then £6 per week thereafter. Alternatively, employees could claim relief on the actual amounts incurred, subject to being able to provide evidence, such as phone bills.

Consequently, during 2020/21, where employees were not reimbursed by their employer for these costs, employees working at home were able to make this COVID -related claim under

s336 ITEPA 2003. The £6 per week did not need to be restricted based on the number of days spent each week at home versus the office.

Employees could use the Government's online claims checker to find out how to make the claim, which for those not submitting tax returns would have been many would have been via the government gateway to claim tax relief in-year through their PAYE code.

This COVID-related claim will not automatically roll forward to 2021/22. Employees who are still required to work from home and whose employers do not reimburse their relevant homeworking costs will need to submit a new claim this year, which will apply to the whole year, even if the employee returns to working in the office partway through the tax year.

https://www.gov.uk/tax-relief-for-employees/working-at-home

Taxpayers with offshore income

The Government is seeking views on ways to help taxpayers get their offshore tax right first time and how best to ensure offshore tax compliance and prevent mistakes.

Some taxpayers inadvertently declare less tax than they should, resulting in intervention by HMRC and penalties potentially being payable by the taxpayer. It is up to each taxpayer to check they are getting their tax right, but there may be more that HMRC can do to help them ask the correct questions when considering their tax affairs. HMRC has published a consultation document looking at how it could:

- use data in different ways to help taxpayers get their tax right;
- better support taxpayers with their offshore tax obligations;
- work with agents and intermediaries to help promote offshore tax compliance amongst taxpayers.

A key part of the suggested approach involves making use of the offshore data received to help people get their offshore tax right first time. This could be by personalising tax returns, removing opportunities to get it wrong, or by sharing data and contacting taxpayers, and their advisers, earlier to prevent non-compliance before it happens.

The closing date for comments is 21 June 2021.

https://www.gov.uk/government/consultations/discussion-document-helping-taxpayers-get-offshore-tax-right

Capital tax

National heritage assets extended deadline

The Conditional Exemption defers inheritance tax due on national heritage assets provided certain access conditions are met. Only a couple of months ago we reported that HMRC had confirmed that they would not consider that these conditions had been broken if the property was closed or opening was delayed until April 2021.

This date has now been extended to July 2021 and will apply even if it means missing some of the period covered by the agreement, or the property is not open at all until July 2021.

https://www.gov.uk/government/publications/capital-taxation-and-tax-exempt-heritage-assets#history

Reasonable enjoyment of land not needed

Summary - Land that formed part of the garden or grounds of a property did not need to be used for the 'reasonable enjoyment' of the house for residential rates of Stamp Duty Land Tax (SDLT) to apply.

The decision in this hearing by the Upper Tribunal covered three separate appeals, all of which considered the same point of law, which was the interpretation of s116 FA 2003. This section contains a definition of residential property for the purposes of SDLT. In all cases, the taxpayers argued that their property was mixed, rather than residential property for SDLT purposes:

- In the Hyman case, the property acquired included a cultivated garden but also a separate dilapidated barn, a bridleway and a meadow;

- In the Pensfold case, the property was acquired with 27 acres of land, with the taxpayer arguing that a portion of the land was subject to a grazing licence in favour of a third party; and

- In the Goodfellow case, the property acquired included gardens, a swimming pool but also a garage with a room above used as an office, a stable yard and paddocks.

In all three cases the issue to decide was whether all of the land sold together with the house was or formed part of the garden or grounds of the house. It is the definition of 'grounds' which is the key issue and it hinges on whether this land is available for the use of the residential property. The answer seems to be whether you can identify any commercial use of the land and, if not, it appears that the land is available as grounds of the residential property. The rate of SDLT payable on the total consideration for each sale depended on the answer to that question, with the residential rates of SDLT being higher than the non-residential/mixed property rates.

In each case the First Tier Tribunal had found in favour of HMRC, concluding that the property was residential, rather than mixed property.

The taxpayers appealed to the Upper Tribunal, arguing that land can only be part of "the garden or grounds of" the house if the land is "needed for the reasonable enjoyment of the [house] having regard to the size and nature of the [house]".

If the taxpayers were correct, HMRC argued that all three of the cases would need to be remitted back to the First Tier Tribunal to evaluate the facts of each case by reference to this requirement. By contrast, the taxpayers say that two of the cases would need to be remitted but in the Pensfold case, it was argued that the Upper Tribunal ought to decide the case in favour of the appellant.

Decision

The Upper Tribunal considered two sets of HMRC guidance in this area.

Prior to 2019, HMRC guidance stated that the test for SDLT was similar to the CGT test, which imposes a permitted area of not more than 0.5 hectare or such larger area was required for the reasonable enjoyment of the dwelling and includes a reasonable enjoyment requirement. The taxpayers stated that this guidance supported their argument.

In 2019, this earlier guidance had been superseded by updated guidance contained HMRC's Stamp Duty Land Tax Manual, which stated that when interpreting s116 there was no statutory concept of "reasonable enjoyment"' and no statutory size limit that determined what was meant by garden or grounds.

The Upper Tribunal concluded that in all three cases, the land was part of the grounds and that the guidance did not support the taxpayers' argument that a 'reasonable enjoyment' test needed to be met. Although the earlier guidance may have supported the taxpayers' argument, it had been corrected in 2019 as it did not comply with the SDLT legislation.

The land in all three cases was, or formed part of, the gardens and grounds of each property and so residential rates of SDLT applied to each purchase.

Comment

This is an area of advice which is causing significant problems currently. Many solicitors are passing the responsibility for SDLT advice to accountants as they feel they can no longer deal with the complexities that arise. The interesting aspect of these cases is that there is no sense of whether the amount of land which might be available for the use of a residential property (assuming there is no commercial use put to the land) might have any limit. It may be that, in reality, it would be unlikely that a vast acreage of land would be maintained without any commercial activity. However, there may still be some issues to be considered in this area. This case did not really challenge the original arguments made by HMRC in the First Tier Tribunal about lack of commercial usage; it focussed entirely on aligning the SDLT provisions with the private residence relief provisions by introducing a 'reasonable enjoyment' test.

Hyman & Ors v HMRC [2021] UKUT 0068 (TCC)

Administration

Alternative argument refused

Summary - HMRC failed to provide adequate reasons for their late inclusion of an alternative argument in its skeleton argument. This was held to be unfair and prejudicial and was not allowed.

Anthony and Ross Outram used a Montpelier tax mitigation scheme that claimed to generate allowable trading losses which the taxpayers included in their 2005/06 tax returns. HMRC issued discovery assessments in relation to those returns on 24 February 2015.

On appeal, Anthony and Ross Outram had conceded that the losses were not allowable but they challenged the validity of the discovery assessments. This depended on HMRC being able to bring the assessments within the extended 20-year time limit, with the loss of tax brought about deliberately by the taxpayers or by a person acting on their behalf.

HMRC's statement of case alleged deliberate conduct by the taxpayers, but it did not allege deliberate conduct by a person acting on their behalf. However, HMRC's skeleton argument for the appeal, dated 21 January 2021, did contain such an allegation. HMRC argued that Montpelier was acting on behalf of Anthony and Ross Outram and could be considered to have brought about the deliberate loss of tax for the purposes of the relevant legislation.

On 25 January 2021, four days before the hearing, Anthony and Ross Outram made an application that HMRC should not be permitted to submit this new argument.

Decision

The Tribunal agreed that HMRC's new argument in the skeleton argument effectively introduced a new issue which should have been pleaded in its statement of case and that they needed to decide whether HMRC were allowed to argue at the hearing that Montpelier were 'acting on behalf' of the taxpayers to bring about a loss of tax.

The Tribunal considered the definition of 'acting on behalf of' in Bessie Taube Trust (TC735), as confirmed in CRC v Hicks [2020] STC 254. They concluded that HMRC faced an uphill task to establish that the information provided by Montpelier to the taxpayers and/or their accountants, Barnes Roffe, brought Montpelier within the ambit of acting on behalf of the taxpayers. However, the Tribunal decided that although the argument had 'legs', those 'legs' were 'somewhat spindly'.

The Tribunal was conscious that by restricting HMRC to the argument that the deliberate conduct was that only of the taxpayers, HMRC could be being deprived of an "argument of some significance" and by doing so it might cause them prejudice, since it was an argument which might succeed.

However, the Tribunal concluded that, given the lateness of HMRC's introduction into the appeals, the inadequacy of the reasons given for that lateness and the impact it would have on the form and timing of the hearing, the balance of prejudice weighed heavily in allowing the taxpayers' application.

Anthony and Ross Outram v HMRC (TC08016)

Returns filed but not signed by taxpayer

Summary – The taxpayer had acted carelessly by allowing his agent to submit tax returns without either reviewing or signing them. Failing to provide evidence to support his business expenses meant valid discovery assessments had been raised by HMRC.

Shane Burke was a self-employed civil engineer sub-contractor, who authorised Kumarans to act as his accountancy agent.

From 2011/12 to 2015/16, annually he provided documents to Kumarans to enable them to prepare his Self Assessment tax returns. Other than this, he did not have any other involvement in the preparation of the returns, did not sign any returns, and did not receive a copy of the returns submitted.

Kumarans filed a number of versions of his 2015/2016 return, the second to amend an incorrect claim for exemption from Class 4 National Insurance Contributions and a month later, a third version showing a £20,000 increased claim for business expenditure, resulting in a claim for repayment of £4,058.

HMRC opened an enquiry his 2015/16 return, focussing attention on his business expenditure of £30,015. HMRC issued an information notice requesting an itemised breakdown of the expenditure, as well as all receipts, purchase invoices and any other documentation used to support the claim. HMRC also asked for details of the nature of his business undertaken in that year.

Kumarans failed to deliver the information requested, which resulted in penalties for non-compliance.

With no information forthcoming, HMRC concluded that, with no explanation provided as to why an amendment had been made increasing the expenses by 50%, the expenses claimed were excessive. HMRC used best judgement to reduce the expenses down to 20% of turnover as their best judgement of what was reasonable for his business activity.

HMRC also informed Shane Burke that the returns for 2011/12, 2012/13 and 2013/14 would need to be adjusted in a similar manner by issuing discovery assessments but that they did not propose to amend 2014/15 as expenses in that year stood at 21% of turnover.

On 12 December 2017, HMRC issued a closure notice for the year 2015/16 and issued discovery assessments in respect of 2011/12, 2012/13 and 2013/14.

Shane Burke appealed arguing that:

- The conditions for the discovery assessments were not met;
- He should not receive any penalties because he acted responsibly and Kumarans disappeared without providing him or HMRC with any documentation;
- The penalties were excessive.

He did not challenge the quantum of the discovery assessments, but rather whether HMRC had established that there was a discovery for each of the relevant years.

Decision

The First tier Tribunal concluded that a discovery took place when HMRC's officer concluded that no more information would be forthcoming in respect of the 2015/16 return and that the same approach should be taken for the previous years. It would not have been obvious from the tax returns that there was an insufficiency of tax. Such a conclusion was dependent on supporting documentation being provided by the taxpayer or their agent. With no such evidence provided, a discovery took place.

Had Shane Burke acted as a prudent and reasonable taxpayer? The Tribunal found him to be careless:

- He did not check the returns;
- He did not check what the expenditure claimed related to or that it was correct;
- There was no evidence as to what records and information he gave to his then agent;
- He gave no evidence to explain why he had permitted the return to be submitted without his signature.

The First tier Tribunal also found his agent, Kumarans, was careless in not providing the returns to Shane Burke to check or adequately checking with him as to what his business expenditure was.

The discovery assessments were upheld.

Shane Burke v HMRC (TC08020)

Reinstatement of follower notice penalty

Summary – The Upper Tribunal reinstated a follower notice penalty for failing to take corrective action but, to reflect the company's cooperation, the penalty charged was reduced.

Comtek Network Systems (UK) Limited entered into an avoidance scheme intended to save just over £22,000 of SDLT.

The case summary confirmed that the details of the avoidance scheme were not material to this appeal. Suffice it to say, HMRC enquired into the scheme, concluding that it was ineffective.

On 1 February 2017, the First Tier Tribunal determined the appeal of *Crest Nicholson (Waiscott) and others v HMRC* [2017] UKFTT 0136 (TC) in favour of HMRC. This concerned avoidance arrangements similar to the scheme in this appeal. No appeal was made to the Upper Tribunal and so HMRC concluded that it was a final judicial ruling that entitled them to serve a follower notice. Where a follower notice is issued, corrective action must be taken within 90 days. Where such action is not taken, HMRC can charge penalties of up to 50% of the tax in dispute. Despite being contacted by HMRC by letter and by phone prior to the of 3 January 2018, the company did not take corrective action by this date.

On 22 January 2018, the company agreed on the phone to settle their outstanding and subsequently did so. However, HMRC still issued the 50% penalty on 14 June 2018 as the company had failed to take their action by the required January date.

The company argued that a payment plan had been agreed with HMRC and payments were paid on time within that agreement. The company believed that it had taken to the action that was needed. In January 2020, the First Tier Tribunal cancelled the penalty concluding that, under s214(3)(d) FA 2014, the failure to take corrective action was 'reasonable in all the circumstances'.

HMRC appealed to the Upper Tribunal.

Decision

The Upper Tribunal concluded that although the company had settled the accelerated payment notice issued by HMRC, it had not taken the corrective action required to satisfy the requirements of the follower notice. The First Tier Tribunal should have considered why the company had not taken corrective action by the required deadline as this was part of the relevant circumstances. The Upper Tribunal confirmed that any events that happened after the follower notice deadline could not be a reason for the company not to have taken action before the expiry of that deadline. Agreeing to settle the tax due after the 90-day deadline meant that HMRC were within their rights to issue the penalty notice.

The Tribunal moved on to consider the size of the penalty and concluded that events that occurred after the follower notice deadline could be taken into account at this stage. Consequently, taking into account the extent of the company's subsequent co-operation, the Tribunal reduced the size of the penalty to 30%. The company had cooperated by providing 'reasonable assistance to HMRC in quantifying the tax advantage'. It had agreed and settled a payment plan for the tax liability.

HMRC v Comtek Network Systems (UK) Limited [2021] UKUT 0081 (TCC)

Surf letters

The CIOT's Technical Team has summarised how HMRC use verification, or SURF, letters to validate Income Tax Self-Assessment repayment claims. Prior to processing a repayment, HMRC undertake routine checks to ensure the claim is genuine and to identify potential compliance risk and fraud.

SURF1

Initially, HMRC issue a one page 'SURF1' letter to the taxpayer, advising that they believe their unique tax reference (UTR) may have been used to submit a potentially fraudulent repayment claim:

- If the person has submitted the repayment claim, HMRC ask them to call within 30 days (on the official Self Assessment helpline number provided).

- If HMRC do not hear from the person, they will cancel the repayment claim and close down the Self Assessment record and UTR in due course.

Cancelling the Self Assessment record and UTR in this way prevents it from being used for further repayment claims and in other fraudulent activity across HMRC and DWP.

SURF2

Where the taxpayer responds to the SURF1 letter, contacting HMRC as requested, HMRC then issue a second letter, SURF2.

This letter is not a formal enquiry under the Taxes Management Act 1970 but rather these checks are carried out under s9 Commissioners of Revenue and Customs Act 2005 (ancillary powers). This is clearly stated at the top of the SURF2 letter.

This second letter asks the taxpayer to:

- provide evidence of their identity in accordance with a list of documents provided; and

- complete a Repayment Questionnaire and form to claim the refund (Form R38).

Sending the information to HMRC

Currently, verification information is requested by post. To ensure secure delivery, taxpayers or their agents should send good quality copies using the most secure method of postage they feel is appropriate. These copies will be safely destroyed after 50 days.

Letter authenticity

If the taxpayer is concerned about the authenticity of the letter, or needs additional support, they should contact HMRC on the official Self Assessment helpline number.

https://www.tax.org.uk/policy-technical/technical-news/hmrc-self-assessment-repayment-claim-verification-letters

Deadlines

1 May 2021

- SME corporation tax due for periods ended 31 July 2020 not paying by instalments
- New VAT fuel scale charges apply

3 May 2021

- Filing date for printed form P46(Car) for quarter ended 5 April 2021

7 May 2021

- Electronic filing and payment of VAT due for quarter ended 31 March 2021

14 May 2021

- Quarterly corporation tax instalment for large companies

19 May 2021

- Non-eectronic PAYE/NIC/CIS/student loan payment due for month to 5 May 2021
- File monthly construction industry scheme return

21 May 2021

- Monthly online EC sales list for businesses based in Northern Ireland selling goods
- Submit supplementary intrastat declarations for April 2021
  - arrivals only for a GB business
  - arrivals and despatch for a business in Northern Ireland

22 May 2021

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

31 May 2021

- Form P60 should be received by employees from their employers
- Accounts to Companies House
  - private companies with a 31 August 2020 year end
  - public limited companies with a 31 November 2020 year end
- CTSA returns for companies with accounting periods ended 31 May 2020 submitted

News

Finance Bill 2021: Government amendments

On 15 April 2021, the Government published the following two sets of amendments to Finance Bill 2021.

Schedule 7: Hybrid and other mismatches (amendments 17 to 42)

These amendments aim to ensure that the changes made by Sch 7 have effect as intended.

The amendments:

- Delete para 2 of Sch 7. This removes changes that would have amended the definition of "territory" so that, broadly, the tests to determine whether an entity is opaque/transparent would be determined by reference to the law where the entity is incorporated and its investors are resident. The Government intends to introduce revised legislation 'in the next Finance Bill' and which will have effect retroactively from 1 January 2017 (when the hybrid mismatch rules came into effect):

- Clarify what is meant by "corporate rescue conditions" (in new TIOPA 2010 s259NEF(3)) in connection with the treatment of deductions for the release of a debt;

- Insert new sub-s (9A) into TIOPA 2010 s259EC, and a new sub-s (4A) into the new s259ICA, to cover the possibility that a zero-tax territory may not recognise the concept of residence for tax purposes;

- Substitute new sub-ss (7)–(7D) in TIOPA 2010 s259KA (condition E for where Part 6A Chapter 11 on imported mismatches applies) to provide that, where a mismatch is capable of being dealt with in a country that has implemented rules in accordance with the OECD's Hybrid Mismatch Arrangements report, it will not be dealt with by the UK.

The amendments also make a number of minor wording changes.

Schedule 22: Relief from stamp duty land tax for freeport sites (amendments 43 to 52)

These amendments apply to property acquisitions in freeport tax sites using certain sharia-compliant alternative finance arrangements and provide for SDLT freeports relief to be available for these acquisitions by looking at the intended use of the land by the 'relevant person' rather than the 'financial institution'. The change will be effected by adding a Part 3A into new FA 2003 Sch 6C which is introduced by Sch 22 of the Finance Bill.

This means that property acquisitions in freeport tax sites involving alternative finance arrangements will be taxed in the same way as those using conventional finance.

New FA 2003 Sch 6C will introduce relief from SDLT for certain purchases of land in freeport tax sites made between the date the freeport tax site is formally designated until 30 September 2026.

On 19 April 2021, the government announced the following three sets of amendments to the Finance Bill 2021. These amendments will be considered by the Public Bill Committee:

Schedule 2: temporary extension of carry-back of trade losses

Para 3(5) of the Schedule has been removed clarifying that relief under Part 1 of Sch 2 is not available to a furnished holiday lettings business that is treated as a trade.

Schedule 5: pension schemes—collective money purchase benefits

In para 20, references to section 87(7)(b) of the Pension Schemes Act 2021 have been added to ensure that new para 2(10) of Schedule 28 to the Finance Act 2004 (as inserted by para 20 of the Bill) which deals with benefits payable by a collective money purchase scheme in the event of its being wound up, operates correctly in relation to a scheme governed by the law of Northern Ireland.

Schedule 28: VAT late payment interest and repayment interest

In the new Part 2A inserted into Schedule 54 FA 2009 (repayment interest), new para 12E is deleted to remove the provision that would have prevented an amount of VAT credit from carrying repayment interest under FA 2009, Sch 54 for a period referable to the raising and answering of an inquiry by HMRC or the correction by HMRC of errors or omissions in a VAT return.

Sourced from Tolley Guidance

Raising standards

In the Spring Budget 2020, the Government published a call for evidence to look at ways to raise standards in the tax advice market. They have concluded that there is a minority of incompetent, unprofessional and malicious advisers whose activities harm their clients, reduce public revenue, and undermine the functioning of the tax advice market.

In the summary of responses and next steps published on 12 November 2020, the government set out the steps it intends to take in order to raise standards in the tax advice market, to improve trust in the market by reducing poor adviser behaviour and enabling taxpayers to have redress when things go wrong.

Those next steps were:

- to consult on a requirement for all tax advisers to hold professional indemnity insurance, and a definition of tax advice;
- take action to raise awareness of HMRC's the standard for agents with target audiences;
- conduct and publish the results of an internal review of the powers currently available to HMRC that help enforce that standard;
- work in partnership with adviser professional bodies to understand the role they play in supervising and supporting their members and raising standards in the profession;

- review options to tackle the costs to taxpayers of advisers who are claiming tax refunds on their behalf.

HMRC has issued a consultation document containing the government's proposal to introduce a requirement:

- for tax advisers to hold professional indemnity insurance, including minimum levels of cover and how the policy could be enforced and implemented;

- a definition of tax advice.

The consultation is running until 15 June 2021. The Government seeks views on making professional indemnity insurance compulsory for all tax advisers, which they believe will help to create better market incentives for poor performing advisers to improve standards. It would also protect consumers by giving them greater access to recourse against the providers of bad tax advice.

It also asks for views on further steps or alternative courses of action.

The document:

- sets out the detail of what cover may be needed, including who should be insured, minimum levels of cover, excesses, exclusions and run-off cover;

- introduces the Government’s proposed definition of tax advice, which is widely drawn, in order to ensure that the right activities are included. Chapter 5 discusses areas which may need to be exempted or excluded;

- provides details of how the government intends to enforce this requirement.

https://www.gov.uk/government/consultations/raising-standards-in-the-tax-advice-market

Business Taxation

Amortisation of intangibles

Summary – A licence and goodwill were intangible assets with amortisation allowed for corporation tax purposes.

J Roger Preston and Partners, a consulting engineering partnership, was established in the 1920s. By 1994, the partners decided to restructure the business to operate their trading activities through a newly formed company, Roger Preston and Partners Ltd*,* but with the assets, trademarks and client lists retained by the partnership. The partnership granted a licence to the company, in return for an annual fee, allowing the company to trade using the partnership's assets.

Roll forward to 2008 and a Dutch consulting engineer group called Grontmij acquired the entire business in an arms' length deal whereby:

- the partnership sold its business and assets for just under £14.5 million to a newly formed UK subsidiary of the Dutch group, Roger Preston Group Ltd ('the Business Sale');

- the shareholders of Roger Preston and Partners Ltd sold their shares to Grontmij UK, now known as Sweco UK Ltd, for just under £0.5 million ('the Share Sale').

Following the sale, the newly formed company, Roger Preston Group Ltd, showed the licence and goodwill recorded as an intangible asset with amortisation deducted for corporation tax purposes. This followed the accounting treatment. The accounts were signed off by the auditors, KPMG LLP, as being prepared in accordance with IFRS.

HMRC challenged the amortisation deduction arguing that:

- The licence was a financial asset and not an intangible asset;
- The trade and related goodwill belonged to Roger Preston and Partners Ltd, and not the partnership, and so did not qualify as it was an asset bought as part of a share sale.

Decision

The First tier Tribunal found that the sale agreement's description of the business that was the subject of the Business Sale was accurate. It was "the business of licensing the Assets for fees by the Partnership to [the Taxpayer] including the Goodwill and all other rights under the Licence Agreement." The licence was a licence, and not a financial asset, with a contractual right to cash.

The decision was supported by a number of well-respected accountancy firms, both pre and post partnership sale, who had all identified it as an intangible licence. Indeed, there were also two earlier HMRC enquiries into the licence set up that had found no errors. The licence was an intangible asset, licensing the right to use a variety of other intangibles.

The appeal was upheld.

Roger Preston Group Limited v HMRC (TC08025)

Underground gas storage cavities not plant

Summary - The costs of creating underground cavities for storing gas did not qualify for capital allowances because the cavities were not plant.

The business of the two appellant companies was the development, construction and operation of gas storage facilities. They constructed underground cavities for high pressure storage of gas from the national transmission system. The cavities allowed quick removal of the gas to the national transmission system to enable its owners to profit from gas price volatility. They were created from salt rock deposits by pumping water into the rock to dissolve it ('leaching') and then exchanging the resulting saltwater with gas ('debrining'). The companies claimed capital allowances on the expenditure incurred on leaching and debrining.

The issue to decide was whether these cavities were merely the place where gas was stored, or were they in effect a giant item of machinery for the management of gas?

- The companies argued that the authorities showed that, as soon as it is established that an item has any function as plant, the item is plant.

- The First Tier Tribunal had accepted that the cavities did have some function as plant, similar to that of a pump or compressor, but had concluded that the predominant function of the cavities (storage) was as premises, and so they were not plant.

Decision

Following a detailed review of the case law, the Upper Tribunal held that it did not support the companies' proposition. The proposition was simple and straightforward to state so it would be surprising that it had not been explicitly drawn out in the many cases which considered the relevant principles.

Instead, the Upper Tribunal held that the First Tier Tribunal's approach was consistent with the authorities. Although the terminology of predominance that it used was novel, it reflected the need to make a judgment as to whether it is more appropriate to describe an item as apparatus for carrying on the business or as the premises in or upon which the business is conducted. The First Tier Tribunal had evaluated the plant-like and premises-like functions and made such a judgment. It was fully entitled to reach the conclusion it did and so the companies' appeals were dismissed.

Cheshire Cavity Storage 1 Limited (and another) v HMRC [2021] UKUT 50 (TCC)

Adapted from the case summary in Tax Journal (19 March 2021)

Inclusion of adequate information

Summary – Based on the information in the tax return, computation and accounts, the hypothetical officer should reasonably be expected to have been aware that there was an insufficiency of tax in the company's return.

Ball Europe Limited appealed against a discovery assessment issued for 2015-16 (FA 1998, Sch 18 para 41) on the basis that it had provided the information in its CT600 tax return, computation and accounts for the relevant period.

The First Tier Tribunal asked whether the hypothetical officer would have been aware that there was an amount in the accounts that had not been brought into tax. It decided the answer 'must be yes'. This was because 'a recognised but unrealised gain' was included in the taxpayer's accounts provided to HMRC and, despite not being in the profit and loss, it was 'very clearly stated in the statement of recognised gains and losses (STRGL)'. The amount was clearly not included in the tax return.

Given that they were dealing with large UK group companies, the hypothetical officer should appreciate standard inter-group financing arrangements at the very least.

Further, it must have indicated 'at the very least the need for a more detailed consideration of whether the recognised but unrealised gain in the STRGL ought to be subject to tax'.

The taxpayer's appeal was allowed.

Ball Europe Limited v HMRC (TC08010)

Adapted from the case summary in Taxation (18 March 2021)

VAT and indirect taxes

R&C Brief 4 (2021)

This brief gives information about an accelerated process for VAT registered businesses to request temporary alterations to their partial exemption methods (including combined methods) to reflect changes to their business practices because of the coronavirus pandemic.

Special Method requests

All Partial Exemption Special Method requests must be made by emailing the request to PESMcovid19@hmrc.gov.uk. The email must include the declaration that the method proposed is fair and reasonable. An example of the format that this declaration should take is available in appendix 1 of Partial Exemption (VAT Notice 706).

Where HMRC is satisfied that the aim of the proposal is to address COVID-19 issues only, HMRC will restrict its enquiries to how that proposal addresses those issues.

HMRC will apply normal scrutiny to method requests where there is a risk the accelerated process is being used to increase recovery for businesses whose activities have not been directly affected by coronavirus.

Time limits

Any new methods approved will have a time limit stating that, subject to any other changes, the method will revert to the previous calculation, or for previous standard method users will end, after this point.

The default time limit will be one tax year.

If at the end of the year it is apparent that this will not be sufficient, the taxpayer must submit a further request to continue the changes into a second tax year.

Retrospection

HMRC will only allow changes to partial exemption methods to be applied retrospectively (beyond the tax year in which the proposal and supporting declaration are received) in exceptional circumstances. Coronavirus qualifies as an exceptional circumstance and meets the criteria for retrospective approval.

Capital Goods Scheme

The same accelerated process will be available to businesses who use the Capital Goods Scheme to calculate input tax recoverable on capital items they use for taxable and exempt purposes.

https://www.gov.uk/government/publications/revenue-and-customs-brief-4-2021-partially-exempt-vat-registered-businesses-affected-by-coronavirus-covid-19

'Reverse Skandia'

Summary - The provision of services by a VAT grouped Danish principal to its non-VAT grouped Swedish branch was a taxable supply by the VAT group to the branch, subject to the reverse charge in Sweden.

A Danish bank carried out its activities in Sweden via its Swedish branch. The bank was a member of a Danish VAT group. Its branch was neither a member of a Swedish VAT group, nor was it a member of the Danish VAT group since, under the Danish interpretation of article 11 of Directive 2006/112/EC, group registration was limited to persons established in Denmark.

The bank charged its branch for the use of a computer platform.

The Swedish authorities considered that both entities were separate taxable persons as a result of the bank's VAT group membership, with the result that the charges represented consideration for taxable supplies by the VAT group to the branch, and those supplies were subject to the reverse charge in Sweden.

The Danish bank argued that the bank and its branch constituted a single taxable person, with the result that transactions between them were outside the scope of VAT.

Decision

In *Skandia* (Case C-7/13), it was held that where services were provided by a non-VAT grouped principal established in a third country to its VAT-grouped EU branch, that was a taxable supply to the VAT group since the branch lost its individual status as a result of grouping.

The court in the instant case considered that the same principles applied despite the reversal of the circumstances, i.e. the provision of services by a VAT grouped principal to its non-VAT grouped branch. Thus, there was a taxable supply by the VAT group to its Swedish branch, which was subject to the reverse charge in Sweden.

Danske Bank A/S, Danmark, Sverige Filial v Skatteverket (Case 812/19)

Adapted from the case summary in Tax Journal (19 March 2021)

Input tax claimed denied

Summary – Input tax claims in respect of three invoices were denied. With the first invoice, the supply was made to another group company, with the other two invoices failing to satisfy the requirements of the VAT Regulations to make them valid invoices.

Knightsbridge Accountants Ltd is a limited company whose main business activities include tax consultancy, auditing, bookkeeping, combined office administration/support. The company's other activities include buying and selling goods sourced from Europe.

The majority of Knightsbridge Accountants Ltd's shares are held and controlled by Knightsbridge Holdings Ltd.

On 30 April 2017, Knightsbridge Accountants Ltd submitted a VAT return for the period 04/17 showing a repayment of £60,172.10 due.

In July 2018, HMRC undertook a compliance check, following which, HMRC sought to deny the input tax claims relating to three invoices, the first two of which were issued to Knightsbridge Accountants Ltd but it was unclear who the third invoice was issued to.

1. The Standard Life invoice

   This was dated 20 April 2017, for the purchase of a property for £240,000 plus VAT. Enquiries by HMRC with the Land Registry had shown that the property was owned by Knightsbridge Holdings, and not Knightsbridge Accountants Ltd. The property was also listed amongst Knightsbridge Holding's assets at Companies House and the mortgage was in Knightsbridge Holding's name. HMRC argued that *Knightsbridge Accountants Ltd* was not entitled to claim input tax in respect of the purchase, even if the property is used by them to carry out its business activities and the invoice was in that company's name. Knightsbridge Accountants Ltd argued that it had a beneficial interest in the property and that it was therefore entitled to claim input tax. The holding company arrangement was a condition of the bank that provided a mortgage to fund the purchase.

2. The Waterford Solicitors invoice

   This was dated 3 March 2017 for £88,000, including VAT. The dispute was said to have arisen after two containers were mistakenly shipped to Guyana, instead of Ghana. Solicitors were instructed to resolve the issue with the carrier in France. Although Knightsbridge Accountants Ltd explained that the fees related to a commercial dispute, HMRC argued that the description of "legal fees as agreed" was not sufficiently clear to identify the goods or services supplied, as required by reg 14(1)(g) VAT Regulations 1995.

3. The IAS invoice

   This was dated 15 December 2017, for £6,200, including VAT of £1,033. The customer name has been scored through, as has the description of the goods/services supplied. It was unclear to whom the supply was made. HMRC concluded that there was insufficient evidence to show the nature of the goods/services supplied, or that the supply of goods/services was in the course or furtherance of any business carried on by the company. The invoice was not a valid VAT invoice.

Knightsbridge Accountants Ltd appealed.

Decision

The First Tier Tribunal denied the input tax claim relating to the Standard Life invoice. While the invoice was made out to Knightsbridge Accountants Ltd, the property supply was to Knightsbridge Holdings Ltd as confirmed by both the Land Registry and Companies House.

Further, charges on the property related to mortgages where the borrower was recorded as being Knightsbridge Holdings Ltd. Finally, the Knightsbridge Accountants Ltd's annual accounts for the relevant year did not show any additions for property held. The First Tier Tribunal agreed with HMRC that a business cannot claim input tax on goods it does not own.

The fact that the purchase invoice was addressed to Knightsbridge Accountants Ltd, who used the property, was irrelevant.

The Tribunal agreed that the Waterford Solicitors invoice did not satisfy the requirements of the VAT Regulations. The description of "Legal fees as agreed" was not sufficiently clear to identify the goods or services supplied, as required by reg 14(1)(g) of the VAT Regulations.

Finally, the IAS invoice related to the reservation price for the purchase of property from an Auction House, during an office refurbishment. The Tribunal found that this invoice did not satisfy the requirements of the VAT Regulations. The copy of the invoice supplied as evidence was unclear in terms of whom it was addressed to and part of the invoice was torn, so as to obscure the information that was included in the invoice and the invoice was largely illegible, given that there were ink marks on the invoice. To make matters worse, there was a significant divergence between the invoice that was presented during the Inspection and that which was included in the Bundle, which was only provided a week before the hearing. Having had sight of both invoices, the Tribunal concluded that they were unable to place any reliance on the invoices as representing a clear and accurate description of the goods or services provided, or indeed to whom any goods or services were provided.

The taxpayer's appeal was dismissed.

Knightsbridge Accountants Ltd v HMRC (TC8026)

Goods in transit to Spain

Summary - Goods imported into the UK from Colombia for subsequent despatch to and sale from Spain were not supplied in the UK. The UK import VAT was refundable under the EU Refund Directive.

Jota Jota Alimentos Global SL is established in Spain and does not have a UK establishment.

Choosing the quickest route possible, the company imported a one-off shipment of food products into the UK from Colombia. Two days later, the goods were transported on to Spain.

Jota Jota Alimentos Global SL applied to HMRC's Overseas Repayment Unit for a refund of the import VAT incurred but the claim was refused on the basis that for the period in question the company was deemed to have made a supply in the UK.

Decision

The First Tier Tribunal found that the logistics company arranged for the transport of goods from Colombia to Spain, with the importation into the UK and subsequent despatch from the UK being no more than part of the transit arrangements in order to ensure fast delivery. It did not matter that different transporters were used for the delivery to Tilbury Docks and a second transporter named in the despatch documents for the second leg of the journey to Spain.

Arrangements for the supply of these goods to customers were made by the company in Spain.

Consequently, the First Tier Tribunal concluded that Jota Jota Alimentos Global SL did not supply any goods or services deemed to have been supplied in the UK in the refund period and was therefore entitled to a refund of the VAT under the Refund Directive.

Jota Jota Alimentos Global SL V HMRC (TC08000)

VAT One Stop Shop guidance

UK businesses selling goods and some services to EU customers will need to consider whether the EU's One Stop Shop rules that are effective from 1 July 2021 apply them.

The Commission's guidance includes a new publication, 'Guide to the VAT One Stop Shop' providing details concerning registration, VAT returns and VAT payments for the three OSS schemes (union scheme, non-union scheme and import scheme).

Adapted from Tolleys Guidance news round up summary (6 April 2021)

https://ec.europa.eu/taxation_customs/sites/taxation/files/oss_guidelines_en.pdf

Sale and leaseback

Summary – A sale and leaseback arrangement did not result in the disposal of the taxpayer's 'entire interest' in a care home. Consequently, HMRC was not entitled to claw back the benefit of the zero-rating that had applied when the taxpayer acquired the home from a developer.

In 2013, Balhousie Holdings Ltd acquired a care home from the developer, financing the deal by a sale and leaseback of the building for a 30-year period.

The acquisition was zero-rated under VATA 1994 Sch 8 Group 5, as the first grant by the developer of a building with a 'relevant residential purpose'.

Under the legislation, having acquired such a zero rated a residential building, if within ten years of the building's completion the 'entire interest' in the building is disposed of, there is a self-supply that claws back the benefit obtained. This purpose of this legislation was to ensure that the benefit of zero-rating was not given to a party who was not prepared to commit to running a building for the relevant residential use for a substantial period of time after completion.

The issue in this case was whether the sale and leaseback transaction constituted, such a disposal. HMRC argued that the sale and leaseback was two separate transactions, with the sale resulting in the disposal of company's entire interest.

The First Tier Tribunal had found in favour of Balhousie Holdings Ltd, but this decision had been overturned by the Upper Tribunal, later confirmed by the Court of Session. The company had disposed of its entire interest as the two transactions had to be considered separately. Here we consider the Supreme Court's decision.

Decision

The Supreme Court stated that the issue to determine was whether there was a disposal of Balhousie's 'entire' interest such that the property was no longer a relevant residential

property for this purpose. The court needed to consider, whether at any time, Balhousie Holdings Ltd no longer held any interest in the care home.

The court concluded that the sale and lease occurred simultaneously and so at any point in time, Balhousie Holdings Ltd either had an ownership or a leasehold interest. The net effect was that the company had not disposed of its 'entire' interest and so the self-supply provisions did not apply.

Their decision was consistent with a purposive interpretation of the legislation, as Balhousie Holdings Ltd had continued to run the property as care home after the leaseback transaction had taken place.

Balhousie Holdings Ltd v HMRC [2021] UKSC 11