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November 2024

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Personal tax

Football referee employment status (Lecture P1461 – 19.61 minutes)

Summary – The minimum requirements of mutuality of obligation and control necessary for a contract of employment between the referees and PGMOL were satisfied in relation to the individual contracts. The case was remitted back to the First Tier Tribunal to decide if, in the light of all relevant circumstances, the individual contracts were contracts of employment.

Professional Game Match Officials Limited (PGMOL) trained and provided referees and other match officials for football matches. Premier League matches were usually being refereed by full-time referees who were employed by the company.

This case involved the status of 'National Group' referees, who officiated matches in the Championship, Leagues 1 and 2, as well as cup matches. Typically, 'National Group' referees were paid, part-time referees who had other full-time employment or occupations, but chose to referee in their spare time. The issue was whether they were employed or self-employed for income tax and national insurance purposes.

'National Group' referees were subject to an annual, overarching contract signed at the start of the season that required them to pass a fitness test and attend an introductory seminar. This did not guarantee them any matches. Individual match contracts were then offered and accepted on a match-by-match basis, with referees required to:

- follow PGMOL's match-day procedures and code of conduct;
- wear kit supplied by PGMOL but supplied their own boots, whistles, and cards.

Match appointments were offered online on a Monday for matches the following weekend, and referees could choose whether or not to accept. If rejected, PGMOL would typically want to know the reason.

Once accepted, a contract was formed whereby the referee agreed to officiate at the match and submit a match report, in return for PGMOL paying the referee a match fee. Both parties were entitled to terminate the contract prior to the match without penalty. Typically, this only due to injury or illness. Once the match report had been submitted, the referee's engagement was at an end. If the referee did not attend the match, the contract was effectively cancelled, without penalty, and no match fee would be payable.

PGMOL treated these part-time referees as self-employed and so did not treat the fees paid to them as employment income. HMRC argued the referees were employees with match fees taxable as employment income.

By the time of the appeal to the Supreme Court, it had been agreed that the overarching contract was not an employment contract and so the issue left to decide was whether the requirements for mutuality of obligation and control were satisfied in connection with the individual match contracts.

Decision

Remember, the Supreme Court was only considering the contracts for individual matches.

The Supreme Court confirmed, following the tests from with the Ready Mixed Concrete case, that for employment to exist both mutuality of obligations and a sufficient degree of control needed to exist.

Mutuality of obligations

The Supreme Court stated that for mutuality of obligations to exist, the referee must provide their personal service in return for payment by PGMOL. The payment of match fees meant that this was satisfied.

The Court confirmed that sufficient mutuality of obligations could exist by considering both parties' obligations in the period from when the referee arrived at the ground to the submission of their match report on the following week. It was not necessary to show that the referees were under contractual obligations before their arrival at the ground. However, in this case the parties were under mutual contractual obligations from when the referee accepted the match offer. It did not matter that the parties had a right to cancel without penalty. While the contract remained in place, mutuality of obligations existed.

Control

When considering control, the Supreme Cort stated that it was not necessary for PGMOL to give direct instructions to referees throughout the contract period or to have a contractual right to intervene in every aspect of the referee's performance or during the performance of the employee's duties. The Supreme Court gave the analogy of a hospital manager having little or no control over a surgeon during an operation but that did not prevent them from being in employment. There just needed to be a sufficient framework of control throughout each contract. Each case was fact dependant. In this case, PGMOL controlled the referees through their fitness requirement, the match-day procedures document and FA Regulations. There was a strict code of conduct in place. Referees could be coached, assessed and could receive performance bonuses at the end of the season. Equally they could be dropped.

Contracts of employment?

Having concluded that both mutuality of obligations and control were present, this was not sufficient to be able to conclude that an employment relationship existed. The Supreme Court remitted the case back for the First Tier Tribunal to consider, based on its original findings of fact, the third stage test from the Ready Mixed Concrete case. The Tribunal must take all of the circumstances into account, including the level of mutuality and control discussed here, and apply the guidance given in the Atholl House case. When considered in the round, were these contracts of employment? We will have to wait and see.

HMRC v Professional Game Match Officials Limited [2024] UKSC 29

No arguable grounds for appeal (Lecture P1461 – 19.61 minutes)

Summary – The 'highly contrived' scheme involving an employee benefit trust and gold bullion did not work. The gold bullion formed part of the directors' employment earnings.

Wired Orthodontics Limited established an employee benefits trust and undertook to contribute £300,000 worth of gold bullion for the benefit of its two director- shareholders, Ms Bessant and Mr Hutchinson, within the next ten years.

The directors immediately sold the bullion they had been awarded and used the proceeds to discharge the company's payment obligation. This created corresponding credits in the directors' loan accounts which they later drew on when the company had profits to make cash payments to them. In addition, the directors agreed to take on the company’s obligation to pay £300,000 into the trust.

The general anti-abuse rule advisory panel concluded that the arrangements were 'abnormal and contrived'.

HMRC concluded the gold bullion constituted 'money or money's worth' and formed part of the directors' earnings in relation to their employment (s.62 ITEPA 2003).

The directors argued that the arrangements were loans rather than earnings because the award of the bullion and/or the money from the sale of the bullion was received on the basis that they had an obligation to pay equivalent amounts to the EBT in the future.

After the First Tier Tribunal dismissed the taxpayers' appeal, they applied to the Upper Tribunal for permission to appeal.

Decision

The Upper Tribunal found that the taxpayers were wrong to claim the First Tier Tribunal attached no weight to the directors' obligation to pay the EBT as the First Tier Tribunal:

1. explained why it accepted HMRC's argument and rejected the taxpayers' – it found there was no actual loan (as accepted by the taxpayer) and the obligation to the EBT did not have the effect suggested by the taxpayer;

2. had correctly directed itself as to the law on earnings and properly understood the decision in RFC 2012 (in liquidation) (formerly the Rangers Football Club plc) v Advocate General for Scotland [2017] STC 1556.

On the taxpayers' argument that the directors never had any entitlement to the gold – they paid market price for it and it was 'pre-ordained' that they would sell it and pay the purchase price as the company had no funds to pay for the gold – The Upper Tribunal considered the First Tier Tribunal's findings of fact to be 'unarguable'. The directors received the gold.

Finally, on whether the payment was deductible, the Upper Tribunal stated that it was 'not arguable that a decision that earnings arose for tax purposes mandates a decision that the payment was deductible; it all depends on the facts'. The Tribunal agreed with the First Tier Tribunal that the scheme was 'highly contrived and could scarcely have been more artificial, and did not cease to be so because it did not work'. Nor did the Upper Tribunal accept the taxpayers' suggestion that, because the scheme did not work, one should 'effectively ignore the contrived steps of the scheme and treat the payment as “normal” remuneration'.

Permission for the taxpayers to appeal was refused.

Wired Orthodontics Limited and others v [2024] UKUT 00266 (TCC)

Adapted from the case summary in Taxation (12 September 2024)

Benefit of the statutory residence test (Lecture P1461 – 19.61 minutes)

Summary –The taxpayer was deemed to be UK resident as under the Belgium/UK Double Tax Convention his 'centre of vital interests' remained in the UK.

This case considered the old regime’s subjective test of residential status and shows why there was a need for the instruction of the current statutory residence test, which provides a more mechanistic test to apply when determining a taxpayer’s residential status.

At the beginning of April 2006 Kevin McCabe, former chairman of Sheffield United FC, relocated to Belgium to create the European Headquarters of his successful building business, claiming this was to facilitate the expansion of his company’s international business. He bought a flat in Brussels, replaced some UK bank accounts with accounts in Belgium, resigned from various boards and clubs and changed his address with various contacts and organisations. He transferred his UK property into his wife’s name (who remained living in the UK with their sons). He returned to the UK regularly, staying in hotels rather than the family home. He returned at Christmas, to watch a good number of Sheffield United matches and to attend key social events. As owner of the Scarborough Group, he continued to be director of the holding companies and some of the other companies within the group.

HMRC argued that Kevin McCabe had relocated to Belgium in an attempt to avoid the capital gains tax that would become payable on the gift of shares in the Scarborough Group to his sons, which he made in 2008. HMRC claimed that he had been advised to become non-UK resident for at least five tax years (s10A TCGA 1992). HMRC argued that putting their home into his wife’s name and sleeping in a hotel just down the road but continuing to use the home to spend time with his family was wholly artificial.

The First Tier Tribunal found in HMRC’s favour. Despite spending significantly less time in the UK than before his move to Belgium, his made frequent visits and had not loosened of his UK ties sufficiently. His family remained in the UK in the family home, which he visited despite staying in hotels overnight. He continued to attend sports fixtures and saw friends in the UK.

Kevin McCabe appealed to the Upper Tribunal.

Decision

The Upper Tribunal upheld the First Tier Tribunal’s decision.

Although Kevin McCabe’s work entailed long working hours (more than a normal working week) in Belgium and other countries outside of the UK, he also worked in the UK. The Upper Tribunal stated that the First Tier Tribunal could not just ignore his UK work. His overseas hours did not indicate that he had a made a distinct break in the pattern of his life in the UK.

The Upper Tribunal confirmed that the First Tier’ Tribunal had not erred in its approach to the days and part days spent in the UK by Kevin McCabe or its assessment of the quality of his presence in the UK. The Upper Tribunal also accepted the analysis undertaken by the First Tier Tribunal when considering the extent to which his business meetings were in fact held in the UK as opposed to elsewhere abroad. There was no error of law in their approach.

The Upper Tribunal stated that the First Tier Tribunal had not erred in finding that Kevin McCabe had a permanent home available to him in the UK. Despite transferring the house into his wife's name, he made frequent trips to the UK and although he slept in hotels when he visited, he was able to stay in the family home and did actually use the property during the day.

The final ground for appeal concerned whether the First Tier Tribunal had erred in law in finding that Kevin McCabe had his centre of vital interests in the UK, rather than in Belgium (Article 4(2)(a) of the Double Tax Convention). This article provides for an individual with a permanent home available to him in both the UK and Belgium to be resident in "the State with which his personal and economic relations are closer". The First Tier Tribunal had accepted that Kevin McCabe had various connections to Belgium but placed greater weight on his personal and economic relations in the UK including:

- the time spent by Mr McCabe in the UK with family and friends;
- his attendance at numerous football matches, both home and away;
- his continued involvement in the Scarborough Group, including a substantial amount of this work being done from the UK;
- the fact that the Belgian personal service company derived its revenue from consultancy contracts with UK businesses.

The Upper Tribunal dismissed the appeal.

Kevin McCabe v HMRC [2024] UKUT 280 (TCC)

Late application for fixed protection (Lecture P1461 – 19.61 minutes)

Summary – The taxpayer's late application was refused as the First tier Tribunal had no jurisdiction to consider a late application. Its only jurisdiction was in an appeal over whether the conditions for fixed protection were satisfied or not.

The taxpayer, a retired dentist, made an application for fixed protection against the lifetime allowance under the 2012 regime on 24 July 2022. However, the time limit for such an election expired on 5 April 2012 so the application was more than 10 years late.

HMRC refused to accept the election and the taxpayer appealed to the First Tier Tribunal on the grounds that it was unfair and unjust for him to have known about the deadline for fixed protection 2012 and that he was not informed about the deadline by his pension providers.

Decision

The First Tier Tribunal noted that, unlike the original 2006 fixed protection regime, the legislation for fixed protection 2012 did not make provision for a reasonable excuse defence where a late claim was made.

The Tribunal confirmed it had no jurisdiction to consider a late application as its only jurisdiction was in an appeal over whether the conditions for fixed protection were satisfied.

The taxpayer was attempting to raise a public law challenge over the way in which HMRC had exercised its care and management powers and the tribunal could not address such matters.

Finally, for the sake of completeness, the First Tier Tribunal confirmed that, in its view, HMRC had no obligation to notify taxpayers of changes in the law.

The application was refused.

Paul Haigh v HMRC (TC09284)

Adapted from the case summary in Taxation (19 September 2024)

EIS - not ready to trade **(Lecture P1461 – 19.61 minutes)**

Summary – Enterprise Investment Scheme (EIS) relief was denied as neither company was ready to trade by the required deadline.

Putney Power Limited and Piston Heating Services Limited both issued shares on 4 April 2016 with the intention that the individuals who subscribed for those shares would be entitled to the 30% Enterprise Investment Scheme (EIS) income tax reduction on the amount subscribed.

Both of these investment opportunities were developed by the same investment manager, Triple Point Investment LLP. There are three other companies whose appeals are stayed behind the appeals of Putney and Piston.

In January 2020 HMRC decided the shares were ineligible for EIS relief and denied the claims, principally because the companies had not commenced trading by the statutory deadline of 4 April 2018, two years after the shares were subscribed as required by s.179(2)(b)(ii) ITA 2007.

HMRC argued that neither company was trading as the power stations that were to be used to produce and supply electricity were not constructed and ready for operation by 4 April 2018. The companies argued that they were ready to face and find customers and indeed had entered into contracts to do so. Construction did not need to be completed.

The companies appealed.

Decision

Having reviewed the case law, the First Tier Tribunal stated that trading starts when a restaurant is open for business or, when a factory starts to make things. To arrive at this point, a trader will need to have set up their business infrastructure and taken operational steps to be ready to trade. The Tribunal stated that case law does not suggest that “it is necessary to have achieved a sale, but it is necessary to be “open for business”, to be ready, willing and able to supply the relevant goods or services.”

The Tribunal clarified that the trade infrastructure does not need to have been completed before trading starts as long as the infrastructure is operational, even if not on the scale or in the manner ultimately planned). For example, where a restaurant is to operate over two floors, the owners could open only the downstairs to start bringing in income, while construction on the second floor is completed.

A trader opens for business “by taking a step which exposes them to real operational risk and reward (for example, producing goods “on spec”, buying food for a restaurant or other raw materials, incurring the staff or other costs of opening a restaurant or being ready to provide some other service, with or without a booking or client signed up, contracting to supply goods or services now or in the future).

However, where a trader takes such operational steps in anticipation of completing their infrastructure, that will not accelerate the commencement of their trade.

Neither company had completed the construction of their infrastructure by the EIS Deadline of 4 April 2018, which meant that neither company had begun to carry on a qualifying trade.

The appeals were dismissed.

Putney Power Limited and Piston Heating Services Limited v HMRC (TC09300)

Capital taxes

Stocked to managed wild fishery (Lecture P1462 – 14.40 minutes)

Summary – The taxpayers' stocked fishery had become a managed wild fishery by death, which was denied Business Relief as the business consisted mainly of holding investments.

For 17 years since her husband's death, Mrs Pearce had owned and run a fisheries business, Kingsworthy Meadow Fisheries. The business was part owned personally by her and part owned by her as a life tenant in a will trust set up by her late husband.

Initially, customers wanting to fish from her stocked fishery had paid rod fees to gain permission to fish from the allocated part of the riverbank.

However, with the Environment Agency starting to discourage stocked fisheries by refusing to renew fish stocking licences, she changed so that the business became a managed wild fishery. With fishing now more difficult, it was less popular and income declined such that she barely made any money from the business.

Following her death, her executors claimed Agricultural Property Relief in respect of part of the property, and Business Relief in respect of other parts of the property which included:

- An office, client reception and rod room, as well as an outdoor toilet for client use;
- An outbuilding and garage that stored fishing and ground maintenance equipment;
- The river and the streams containing the fish and the managed banks from where the fisherman fished
- A car park for customer parking.

HMRC agreed the Agricultural Property Relief claim but denied the Business Relief on the basis that her business was simply exploiting the land to generate income and this was an investment activity. The business consisted mainly of holding investments and so relief was denied.

The taxpayers appealed.

Decision

The First Tier Tribunal confirmed that owning and holding land to obtain an income from is 'generally' an investment activity and that very active management of an investment does not prevent it from being an investment business. It was the 'nature' of the activities undertaken that mattered rather than the level of those activities.

The First Tribunal found that:

- taking bookings and providing basic refreshments and facilities were part of an investment activity;
- the upkeep of the riverbanks was simply maintaining that investment.

There were some non-investment activities but these were not enough. They included providing basic refreshments after a day's fishing as well as lending kit to clients and providing advice to fishermen. Many of the clients had become friends, sharing the family's love for fishing and conservation.

Had the business provided additional services such as tuition and sold or hired equipment for a fee or made available more substantial catering or a bar on site, the Tribunal's decision might have been different.

However, this was not the case and, on balance, the First Tier Tribunal found that the business was mainly a business of holding investments.

The appeal was dismissed.

Dimitrakis G Demetriou as executor of the estate of the late Mrs Pearce & Anor v HMRC (TC09288)

Fishing business or residential grounds? **(Lecture P1462 – 14.40 minutes)**

Summary - The purchase of a six-acre property that included the rights to fish was liable to mixed-use (non-residential) rather than residential SDLT rates

Christopher Brzezicki bought a property consisting of a house and six acres of land. Two acres of the land bordered the River Meon and were separated from the rest of the property by a man-made carrier stream which facilitated the breeding of wild brown trout. There were two small bridges giving access across the stream.

Christopher Brzezicki purchased the property with the intention of establishing a fly-fishing business and did so in the months following the purchase.

He initially filed an SDLT return applying the residential rates, but subsequently amended the return on the basis of mixed use.

Following an enquiry, HMRC issued a closure notice indicating that the property was residential and the taxpayer appealed.

Decision

The issue before the First Tier Tribunal was whether the two-acre 'island' separated from the rest of the land by the stream formed part of the garden or grounds of the house.

The decision is an unusual one in which the non-judicial member of the tribunal issued a dissenting decision, indicating that he would have found the entire property to be residential. However, the presiding judge, using her casting vote, held it did not and so was not residential property. The factors considered by the judge included the following:

- For land to form part of the grounds it had to be adjacent to and contiguous to the house so 'very closely connected without a break'. Because the two acres in dispute formed an island separated from the rest of the land by the carrier stream it was not contiguous with the rest of the land. Although the bridges provided access, this was insufficient to make the island contiguous with the rest of the property.

- The carrier stream itself was a piece of plant, or factory, for the breeding of wild brown trout. It had not been created to provide a beautiful garden or grounds. Although some repair was needed at completion, the stream remained a piece of plant at that time. On completion, the land came with fishing rights and although it was not then used on a commercial basis, this did not prevent the land being non-residential.

The judge accepted that the lack of information in the selling particulars about the carrier stream was not significant as it was the agent's job to sell the property and they would emphasise certain features and disregard others to sell it.

NOTE: The lay member of the tribunal disagreed with the decision, arguing that the property purchase should be charged using the residential SDLT rates. He believed that the island and stream formed part of the grounds of the property and on completion, was an overgrown stream, with no evidence of any commercial use as a farm.

Mr Christopher Brzezicki v HMRC (TC09294)

Adapted from the case summary in Tax Journal (4 October 2024)

Distributions in specie (Lecture P1462 – 14.40 minutes)

Summary - No Stamp Duty Land Tax was due on distributions of the partnership and its properties following purchase of a JPUT holding structure

Brindleyplace Holdings S.À R.L. (BP Holdings) was a Luxembourg-incorporated company.

On 24 March 2015, the company:

- purchased a Jersey Property Unit Trust (JPUT) for total consideration of £59.6 million. The unit trust was a partner in BP ELP, which owned properties in Birmingham worth £130.7m.
- discharged BP ELP's £71.1m external bank debt, creating an intra-group debt.

On 8 May 2015:

- BP Holdings subscribed for additional units in the unit trust, with funds used to discharge the intra-group debt;
- the unit trust’s trustee distributed its interest in BP ELP in specie to BP Holdings, and the unit trust was wound up;
- BP ELP was itself wound up and the properties were distributed to BP Holdings, leaving it as sole legal and beneficial owner of the properties.

HMRC issued closure notices in respect of both distributions in specie, charging Stamp Duty Land Tax (SDLT) of:

- £2.8 million in respect of the distribution of the interest in BP ELP; and
- £5.2 million in respect of the interest in the properties.

The company appealed.

Decision

The First Tier Tribunal considered each distribution in turn.

Distribution of the interest in BP ELP

The question was whether it was a Type A transfer for the purpose of the SDLT legislation on transfers of interests in property-investment partnerships.

Using Finance Bill Explanatory Notes to aid its interpretation, the First Tier Tribunal decided that Parliament intended it to be a condition of a Type A transfer that the acquirer gives consideration under the arrangements for a partnership transfer. The First Tier Tribunal found that the only consideration given by BP Holdings was a sum for the subscription of additional units in the unit trust, but that was not for the acquisition of the partnership. Accordingly, the transfer was not a Type A transfer.

Distribution of the properties to BP Holdings

HMRC argued that group relief was restricted due to the arrangements' purposes. However, the First Tier Tribunal decided that this distribution was carried out for bona fide commercial purposes, to reduce complexity in the holding structure and reduce administrative costs.

The Tribunal also decided that the arrangements, including the initial choice of purchasing units in the unit trust, rather than the properties directly, did not involve tax avoidance. The parties were not using a tax relief for a purpose not intended by Parliament, nor were they failing to face the economic consequences of their choice. Accordingly, tax avoidance was not a main purpose of the arrangements.

Finally, the First Tier Tribunal considered the application of the s.75A FA SDLT anti-avoidance provision. It decided that the notional land transaction postulated by that provision was a transfer of the properties by the partners in BP ELP at the date of the actual transfer to BP Holdings, rather than by those who were the partners at the start of the chain of scheme transactions. The result was that the notional transfer was the same as the actual transfer, so it did not apply to increase the amount of SDLT payable.

Brindleyplace Holdings S.À R.L v HMRC (TC09282)

Adapted from the case summary in Tax journal (27 September 2024)

Administration

PAYE employment expense claims **(Lecture P1461 – 19.61 minutes)**

In response to the tax risk from ineligible employment expense claims, on 7 October 2024 HMRC published details of a new process for claiming PAYE employment expenses. These are effective from 14 October 2024.

From this date:

- taxpayers can no longer submit a PAYE employment expense claim using the digital form or by making a new claim over the phone. However, they will continue to be able to use GOV.UK to check they are eligible to claim employment expenses.

- claims must be made using a paper P87 form, together with supporting evidence to prove eligibility such as receipts, mileage logs, employment contracts for working from home expenses.

- Taxpayers must send their evidence to:

  Pay As You Earn and Self Assessment
  HM Revenue and Customs
  BX9 1AS

Once the P87 form plus supporting evidence is received, HMRC will check all evidence and confirm whether individuals are entitled to tax relief.

HMRC recognises that an online claim route is a more convenient option and is working 'at pace' to reinstate the digital process as soon as possible. Indeed, for 'uniform, work clothing and tool' expenses, customers can claim these online from 31 October 2024. For all other expenses, HMRC expects a digital claim route to be available by April 2025.

HMRC will keep this updated process under review and will provide a further update in the future.

https://www.gov.uk/government/publications/hmrc-issue-briefing-evidence-required-to-claim-paye-p87-employment-expenses/evidence-required-to-claim-paye-p87-employment-expenses

No tax advice sought **(Lecture P1461 – 19.61 minutes)**

Summary – The taxpayer had been careless by not seeking tax advice. PAYE determinations and penalties issued were payable by the company.

Janet Bray trained and worked as a pharmacist for a number of years before becoming a consultant providing services to the pharmaceutical industry. She traded through her company, Janet Bray Limited, where she was the sole director-shareholder.

Janet Bray Limited paid a firm to recommend how best to remunerate its employees. Based on this advice, the company took part in a tax avoidance scheme.

Under the scheme, a sub-trust was set up for each employee and a funds were allocated to that sub-trust, which were then loaned to the employee.

No PAYE or National Insurance Contributions (NIC) were accounted for.

Janet Bray Limited claimed a corporation tax deduction for the initial advisory fee paid on the basis that it was a payment to an independent party who recommended how key employees should be rewarded.

By the time of this hearing, the Supreme Court had reached its decision in the Rangers case, finding that amounts contributed to an employee benefit trust to remunerate employees by way of loans were earnings at the time the contribution was initially made.

As a result, the company accepted that the scheme did not provide the anticipated tax savings but challenged the determinations on the basis that:

1. There had been no carelessness justifying an extension of the time limit for making an assessment but if there had been carelessness, it did not lead to the relevant loss of tax;

2. The penalties were challenged on the basis that any inaccuracies in returns had not been brought about carelessly.

Decision

The First Tier Tribunal found that Janet Bray, on behalf of the company, had not taken the reasonable care that somebody in her position should have taken in relation to the scheme.

Despite the company's accountants, their network organisation and the scheme promoters being involved in the arrangements, none of them were engaged to provide tax advice. In fact, all of the professionals had specifically stated that they were not providing tax advice.

Janet Bray had asked questions of the parties involved but never sought any advice on the tax aspects of the arrangements. The tribunal said:

> 'we consider that a reasonable prudent taxpayer, entering into a tax-saving scheme of this nature with the caveats in the presentation and the engagement letter with Clavis and knowing that their accountant was not providing tax advice, would not have relied on (at best) an assumption that someone involved with the scheme must have been providing tax advice'.

The First Tier Tribunal also concluded that the failure to take reasonable care had brought about the loss of tax.

She had acted carelessly, which meant that the normal four year for assessments to be raised was extended to six years and the determinations were validly made.

The appeal was dismissed, and the PAYE determinations and penalties upheld.

Janet Bray Limited v HMRC (TC09277)

Adapted from the case summary in Taxation (19 September 2024)

Invalid double assessment (Lecture P1462 – 14.40 minutes)

Summary - Discovery assessments were found to be invalid as they assessed property transactions as liable to both Income Tax on trading transactions as well as Capital Gains Tax on the basis that the transactions were capital disposals.

This case related to a number of assessments raised by HMRC in respect of income or gains said to have been realised on certain property matters.

For 2007/08 and 2009/10, HMRC believed that Mark Wyatt realised profits from property development activities and that the property developments were of a trading nature, or alternatively they were capital disposals.

HMRC wrote to the taxpayer confirming that the relevant disposals were part of a trading venture and that assessments were to be raised on that basis. HMRC went on to state:

> "… in the event that we are unable to reach agreement and if the subsequent appeals are listed for Hearing, I feel that it would be prudent to arrange for assessments to be issued on the alternative basis i.e. to include property disposals as both, on trading account and on capital account.

However, when the Relevant Assessments were raised, they did not set out alternative separate assessments but instead contained a single figure for each tax year, being the sum of the amount that would be due on a trading transaction and the amount that would be due on a capital disposal. The assessments effectively taxed the same disposal proceeds twice:

- For 2007/08, the assessment was for £184,586.98, when an assessment purely on the basis of a trading disposal would be for £90,360.18;

- For 2009/10, the assessment was for £228,544.05, when an assessment purely on the basis of a trading disposal would be for £123,595.22.

Mark Wyatt appealed.

Nine days before the date of the present hearing, HMRC acknowledged the issue and issued a fresh assessment for each of the two years of the Relevant Assessments, based on the trading figure only.

Decision

The First Tier Tribunal stated that, having noticed the potential issue, HMRC quite righty invited the Tribunal to express a view as to whether the Relevant Assessments were validly issued, which they did as a preliminary matter.

The First Tier Tribunal found that s.29 TMA 1970 allows an HMRC officer to issue an assessment for an amount which 'in his opinion' is to be charged to make good to the Crown a loss of tax, which in this case was, at most, the amount due on the basis of a trading transaction. Clearly, by including the CGT, the assessments raised exceeded that figure., and so fell outside the boundaries of the assessment power.

The Tribunal stated that by making an assessment that exceeds the amount that the officer actually believes to be due, HMRC effectively deprived the taxpayer of the option to simply accept the assessed figure.

Instead, the taxpayer was forced to enter into an appeals process, even if they agree with the officer's view. Consequently, the Tribunal found that s.29 TMA 1970 should be read as constraining the power of an officer to raise an assessment to be no more than the maximum amount which in their opinion needs to be charged to make good the loss of tax. The assessments were not validly made and was struck out.

Having struck out the assessments, the Tribunal considered that the best course of action to allow a period of time for the necessary procedural steps to be completed to join any appeal against the new assessments to the present appeals under consideration.

Mark Stewart Wyatt v HMRC TC09297

Information notices – safeguards (Lecture P1465 – 13.25 minutes)

This article considers the general safeguards contained within Part 4, Schedule 36, Finance Act 2008 relating to information notices issued by HMRC under the provisions of Schedule 36. Unless stated otherwise, all statutory references are to Schedule 36, Finance Act 2008. Restrictions that apply where a taxpayer has submitted a tax return, under Paragraph 21, were covered in a previous session on taxpayer notices, and are not duplicated in this session. Where you consider that the relevant safeguard has been breached, you should consider appealing the information notice.

Power or possession

A person who receives an information notice is only required to produce a document if it is within that person's "possession or power" (Paragraph 18). This means that the person either has physical control over the document, or they have the ability, including through a legal entitlement, to get the document, or a copy of if, from whoever holds it.

There will not have been a failure to produce the document if the person can satisfactorily show that it is not in their possession or within their power to produce, or why they are unable to produce a document that is within their power.

In relation to partnerships, the position may be different for each partner. Although partners may, generally, have access to certain documents, other documents, such as personal bank statements, will only be in the possession or power of a single partner.

Although there will be many circumstances where it is clear whether a document meets the statutory requirement, as above, there will be other times where it is less so. One such situation is where a taxpayer has the right to receive documents from trustees. Where the position is not clear, it may be appropriate for a client to seek to obtain documents requested by HMRC under an information notice, even if they are not in the possession of the client, and they have no legal right to the documents. If the request is refused, the client will be able to demonstrate to the tribunal, if necessary, that the requested documents are not in their power or possession.

Types of information

A person is not required to provide information or produce documents that fall into certain categories, specified at Paragraph 19. These include items relating to the conduct of a pending tax appeal. In this context, this means a document that has been brought into existence as part of the preparation for the presentation of a tax appeal.

The provision does not cover information or documents which may be used in presenting the appeal, including as evidence, but which existed before the appeal process began. To illustrate the point, HMRC, at CH22160, give the following example:

> "In an appeal where the allowable cost of an asset is in dispute, you would not be able to require production of documents drawn up to analyse the legal arguments about what sort of costs can be claimed. However, you could require production of the invoices as evidence of the asset's cost."

"Journalistic material", or information in such material, is also covered by the exemption at Paragraph 19. "Journalistic material" is defined in Section 13, Police and Criminal Evidence Act 1984, and means material acquired or created for the purposes of journalism. The exemption would, for example, mean that an investigative journalist does not have to disclose source material. It is important to note that material is only journalistic material if it is in the possession of a person who acquired or created it for the purposes of journalism, or unsolicited material sent to a person with the intention of it being used for journalism. It is also important to note that material is either "journalistic material" or it is not. There cannot be partial access to journalistic material, as there is with "personal records" (see below).

A person cannot be required to produce "personal records", or to provide information from "personal records". This term is defined in Section 12, Police and Criminal Evidence Act 1984, and is limited in what it covers. "Personal records" means records concerning an individual's physical, mental, spiritual or personal welfare. Such information is not usually needed to check a person's tax position. However, medical professionals may keep mixed medical and financial records. In such cases, the person can be required to provide the information that does not relate to the taxpayer's welfare. HMRC's guidance, at CH22180, acknowledges that any document that contains welfare information is "very sensitive". Officers must obtain advice from within HMRC before using formal powers to obtain documents or information that may be contained in personal records. Where "personal records" contain mixed information, the person can be required to provide the information that does not related to the individual's welfare.

Old documents

A person is not required to produce a document if the whole of the document originates more than six years before the date of the information notice (Paragraph 20).

However, this provision does not apply where the notice is given by, or with the agreement of, an authorised officer. Where a document originating more than six years before the date of the information notice has been requested, and it is not clear whether the notice has been given by, or with the agreement of, an authorised officer, HMRC should be asked to clarify the position.

HMRC will not, normally, need to see a document that was created more than six years ago, as such a document typically relates to a period that cannot be assessed. However, there may be circumstances where HMRC want to obtain such a document. Typical circumstances can include where HMRC want to check the tax position of a later period, including to check a chargeable gain computation. Also, where HMRC suspect that there may have been a deliberate error in a tax return, where HMRC can consider the last 20 years for assessing purposes. Another scenario is where HMRC have been asked to obtain information from another tax authority.

Deceased persons

Where HMRC is checking the tax position of a deceased person, Paragraph 22 provides that an information notice may not be given more than four years after the person's death. This applies to a notice issued to the taxpayer's personal representatives or to third parties. Advisers should note that the restriction does not apply in relation to the collecting of a tax debt of the deceased.

Legal professional privilege

A person cannot be required to provide privileged information, or to produce any part of a document that is privileged (Paragraph 23). In this context, information or a document is privileged if it is information or a document in respect of which a claim to legal professional privilege (or, in Scotland, confidentiality of communications) could be maintained in legal proceedings. Legal professional privilege is a complex subject, the detail of which is outside the scope of this session. It is a common law rule that protects from disclosure certain communications between a legal professional and the person who is their client.

Advisers should note that the privilege belongs to the client, and not their representative. Advisers should also note that only the client has the right to waive the privilege. This means that the client can choose to waive their right to privilege and provide the information to HMRC. The legal professional, or representative, can only waive their client's right to privilege with that client's express consent.

If advisers, or their client, considers that an information notice contains a request for information or a document that is, or may be, privileged, legal advice should be sought.

Auditors

Paragraph 24 provides that, generally, an auditor cannot be required to provide information or produce documents that belong to the auditor, where they were created for the purpose of carrying out the audit. HMRC's guidance, at CH22280, notes that an officer should not require audit information or papers from a person who was appointed to carry out a non-statutory, independent audit to standards similar to those required for a Companies Act audit provided that the work on the audit is kept separate from any work on the preparation of the client's accounts.

An auditor can be required to provide information or produce documents that would otherwise be protected, in certain circumstances (Paragraphs 27 and 27). Advisers should note that these exceptions also apply to tax advisers (see below). The protection afforded by Paragraph 24 (and Paragraph 25 for tax advisers) does not apply where the auditor (or tax adviser) has helped the person in the preparation or delivery of accounts, returns or other information or documents sent to HMRC, and the papers explain the accounts, return or other information or documents sent to HMRC. HMRC are, in these circumstances, entitled to have access to the protected information.

Although the exception allows the HMRC officer to obtain information showing how a particular entry was arrived at, it does not permit the officer to obtain information showing why the entry was arrived at in a particular way. The protection still applies if the explanatory information has previously been provided to HMRC. Where a document contains a mixture of information, some of which HMRC are entitled to, the auditor or tax adviser can redact the document.

Tax advisers

Paragraph 25 provides a similar protection for tax advisers as auditors receive under Paragraph 24. A tax adviser cannot, generally, be required to provide information or produce documents that belong to the adviser if the purpose of the information or documents was to give or get advice about another person's tax affairs. The tax adviser can be appointed by that other person, or by another tax adviser of that person.

Paragraph 25 refers to the protected information or documents as "relevant communications". The protection only applies when the information notice is given to a tax adviser – it does not apply when the notice is given to the person whose tax position is being checked.

The adviser's automatic response may be to refuse to comply with a notice, on the basis that it would breach client confidentiality. However, there is not an exemption from an information notice solely on the grounds of confidentiality. However, there may be considerations under the Human Rights Act, and suitable representations should be made. The adviser may want to take advice before responding to an information notice regarding one of their clients.

Please refer to the comments, above, about exceptions that apply to the protection afforded to tax advisers.

Practical considerations

When you receive an information notice, whether for you or in relation to one of your clients, it is important to carefully review the document, and to consider what information and documents are being requested. Where any of the statutory safeguards have been breached, it is important to:

- Take advice from a specialist, including where legal professional privilege may be an issue;

- Submit any appeal within the statutory deadline;

- Try to reach agreement with HMRC on the contentious point, ideally without recourse to the tribunal, which adds costs and time to the enquiry process;

- Make sure that you update the client where there are contentious matters, and continue to update them on the progress made;

- Where it is considered appropriate to provide information where one of the safeguards has been breached, obtain the client's instructions to do so.

Contributed by Phil Berwick, Director at Berwick Tax Limited

Deadlines

1 November 2024

- Corporation tax for periods to 31 January 2024 (SMEs not paying by instalments)

2 November 2024

- Form P46 (Car) for quarter ended 5 October 2024.

5 November 2024

- Employment intermediaries to file return for tax quarter to 5 October 2024.

7 November 2024

- VAT returns and payment for 30 September 2024 quarter (electronic payment)

14 November 2024

- File paper monthly EC sales list – business selling goods based in Northern Ireland

19 November 2024

- PAYE, NICs, CIS return and SL liabilities for month to 5 Nov 2024 (by cheque)
- File monthly construction industry scheme return

21 November 2024

- File online monthly EC sales list – business selling goods based in Northern Ireland
- Submit supplementary intrastat declarations for October 2024
  - arrivals only for a GB business
  - arrivals and despatch for a business in Northern Ireland

22 November 2024

- PAYE, NICs, CIS and SL liabilities for month to 5 Nov 2024 (online)

30 November 2024

- Accounts to Companies House
  - private companies with 28 February 2024 year end
  - public limited companies with 31 May 2024 year end
- CTSA returns for companies with accounting periods ended 30 November 2023

News

Scottish and Welsh Budget dates

Scottish Budget date

The Scottish Government has announced that its 2024 Budget will be held on Wednesday 4 December 2024.

This will detail the tax and spending plans for Scotland for 2025/26.

Welsh Budget date

The Welsh Parliament has announced that its outline and detailed draft Budget will be published on Tuesday 10 December 2024.

This will detail the tax, spending and financing plans for Wales for 2025/26.

Changes to the Agent Dedicated Line

The CIOT and ATT have advised that HMRC has published an update on changes to the Agent Dedicated Line (ADL) service.

From 7 October 2024, HMRC has introduced changes to the ADL service for agents with Self Assessment (SA) and PAYE queries.

The key changes are as follows:

- There will be one combined helpline for agents' SA and PAYE queries and an agent can discuss a maximum of five clients on a call or webchat session.
- A new webchat service solely for agents will be available, covering both SA and PAYE queries (excluding repayment claims). Agents calling the ADL will have a new telephone option for progress - chasing SA repayments - while the route for PAYE repayments will continue as before.
- The phone number and opening times for the ADL will remain unchanged. The webchat service can be accessed from the digital assistant on GOV.UK.
- For questions about the resolution of repayment claims, agents must first use the Where's My Reply (WMR) tool and check that the date has passed. After the WMR date, agents can continue using webchat for PAYE repayment updates or use the new telephony option for SA repayments.

  https://www.lexisnexis.com/tolley/plus/research/document?d=281957_syCsg&q=:**

Business taxes

Permanent full expensing planning points (Lecture P1464 – 16.26 minutes)

F(No2)A 2023 brought in temporary capital allowances which comprised a 100% First Year Allowance (FYA) for main rate expenditure and a 50% FYA for special rate expenditure (e.g. on integral features, long-life assets, solar panels and thermal insulation). These allowances, which are only available for companies, originally had effect for expenditure incurred on or after 1 April 2023 but before 1 April 2026.

However, FA 2024 removed the requirement that the relevant expenditure had to be incurred before 1 April 2026 and so this form of relief is now permanently available (subject to any changes being made in the Budget on 30 October 2024). A further important rule is that the company's plant or machinery must be new and unused.

Disposals of plant or machinery for which a 100% FYA or a 50% FYA has been claimed are subject to an immediate balancing charge, equal to:

- the whole of the disposal value in the case of a 100% FYA; and
- 50% of the disposal value in the case of a 50% FYA.

With regard to this latest regime, there are two planning points involving 100% AIAs (if available) which can be helpful:

- for main rate items, it may be preferable to claim 100% Annual Investment Allowances (AIAs) rather than 100% FYAs on acquisition so that the immediate balancing charge rule on a subsequent disposal does not apply (see Example 1); and
- for special rate expenditure, it will often be more tax-efficient to claim 100% AIAs rather than 50% FYAs (see Example 2).

Example 1

On 1 June 2024, Brendan Furniture Ltd, which is a family-owned company with a 31 December accounting date, incurred expenditure of £30,000 on a new lathe.

This purchase was not a success and so the company sold it for £12,000 on 1 September 2025.

The company's main capital allowances pool stood at £17,500 on 1 January 2025.

If Brendan Furniture Ltd had gone down the full expensing route, it would have claimed a 100% FYA of £30,000 in respect of the year ended 31 December 2024, but, during the following accounting period, the disposal would have triggered a balancing charge of £12,000 in the year ended 31 December 2025.

On the other hand, if Brendan Furniture Ltd had opted for a 100% AIA claim (for which the company had ample capacity), there would still have been a capital allowances deduction of £30,000 for the year ended 31 December 2024, but the main pool position for the following year would have been very different.

Thus:

	£
WDV b/f	17,500
Less: Sale proceeds	12,000
	5,500
Less: WDA (18%)	990
WDV c/f	4,510

In other words, instead of Brendan Furniture Ltd having a balancing charge of £12,000 and a WDA of 18% x £17,500 = £3,150 for the year ended 31 December 2025, there would be no balancing charge and a WDA of £990.

Example 2

Glenn Industries Ltd spent £66,000 on a new lighting system for one of its workshops during its year ended 30 June 2024.

This counts as special rate expenditure and would normally attract a 50% FYA.

However, the expenditure is also eligible for a 100% AIA (and the company is nowhere near its £1,000,000 annual limit).

It will therefore be better for Glenn Industries Ltd to claim AIA relief of £66,000 for its accounting period to 30 June 2024 rather than 50% x £66,000 = £33,000 FYA relief.

Contributed by Robert Jamieson

Amortisation of Intellectual Property (Lecture B1461 – 18.41 minutes)

Summary – Despite not being a 'company', the Limited Liability Partnership was related to all of its corporate members and so the amortisation relief claimed by the LLP on the intellectual property transferred to it by its members was denied.

The appellants in this case were an LLP and three companies of the Muller Group, producers, marketers and distributors of dairy products in the UK and the Republic of Ireland.

The companies transferred their trade and intellectual property including goodwill to the LLP, in exchange for becoming corporate members of the LLP.

The LLP:

- recorded the intellectual property at fair value;
- amortised the intellectual property in their accounts; and
- claimed a deduction for the amortised amount in each of the corporate member's tax returns for the periods ended 31 December 2013 to 2018.

The key issue in this case was how s.1259 CTA 2009 and the intangible assets provisions interact and more specifically, whether the corporate members and the LLP were related parties:

- S.1259 CTA 2009 states that where an LLP has corporate members, the LLP's profits must be treated as if they were the profits of a company, and so charged to corporation tax;

- As a company, the intangible fixed asset regime denies relief for intellectual property where the parties are 'related parties' which, under s.835 CTA 2009, includes a company that controls another company or where both companies are under the control of the same person. However, the word 'company' does not include a partnership.

It was agreed that if the LLP had been a company, then relief would have been denied due to the related parties' rule.

- HMRC denied the claims on the basis that the LLP and corporate members were related parties.

- The taxpayers appealed, arguing that this legislation did not apply as this was a partnership and the legislation stated nothing about the deemed company rules applying to ownership characteristics of the LLP. Consequently, the deemed company was incapable of being a 'related party', and amortisation relief was available.

The First Tier Tribunal found in HMRC's favour, concluding that the relationship between the LLP and its corporate members should be judged as if the LLP were a company and so those members were deemed to be treated as controlling the LLP company. They were related parties.

The LLP appealed this decision to the Upper Tribunal.

Decision

The Upper Tribunal stated that this case was a matter of statutory interpretation. On a purposive construction, parliament would not have intended the outcome that the company was arguing.

The Upper Tribunal stated that:

> "there was no dispute that the specific purpose of the provision, consistent with its aim and its wording, is to *calculate* the profits and losses of the firm."

However, the parties disagreed on what was included within the concept of 'calculation'. The Upper Tribunal found that the legislation clearly stated that the deemed company must calculate profits as if it were a UK-resident company, using the rules contained elsewhere in statute. The Upper Tribunal agreed with HMRC, stating that to ignore the related party rules would not give effect to the purpose of applying all of the calculation rules. The LLP's ownership characteristics must be attributed to the deemed company and so the related party provisions were part of the overall process and fell within the purpose of the deeming provision.

The corporate members and the LLP were related parties and relief for amortisation was denied. The appeal was dismissed.

NOTE: Although not necessary, the Upper Tribunal also considered the effect of changes made in FA 2016 to ensure that no relief should be available. Although the intention of the changes was clear, it was agreed that a drafting defect made the change ineffective. However, the Upper Tribunal concluded that it was entitled to look through the defect and so deny the amortisation relief. Following the criteria identified in the House of Lords case of Inco Europe Ltd v First Choice Distribution, the Upper Tribunal stated that the intended purpose of the legislation was clear and that there was an obvious drafting defect.

Muller UK and Ireland Group LLP and others v HMRC [2024] UKUT 00273 (TCC)

Error on assessment (Lecture B1461 – 18.41 minutes)

Summary – The company was liable to pay the s.455 assessment relating to the director's overdrawn loan account and the director was liable to settle the income tax payable in relation to a loan written off but not reported.

TSS Fire Limited was owned by Mr Porter, the sole director, and his wife.

The company had taken over the trade of Trojan Safety Systems Ltd, another company controlled by Mr Porter, which was later liquidated with outstanding debts. A debt of £100,324, owed by Mr Porter to Trojan Safety Systems Ltd was written off.

HMRC opened VAT, PAYE and construction industry scheme checks into TSS Fire Limited which culminated in a referral to the fraud investigation service.

Mr Porter:

- took part in the contractual disclosure facility and acknowledged that he had failed to give his agent the relevant information needed for his returns and that this constituted 'fraudulent behaviour';

- disclosed that he had drawn funds without operating a PAYE or dividend procedure and that he 'benefited by paying insufficient tax'.

HMRC issued:

- The company with corporation tax assessments under s.455 CTA 2010 for four accounting periods as a result of loans made to Mr Porter (£58,394.82) and penalties for these periods (£35,036.89);

- Mr Porter with an income tax discovery assessment (£38,217.30) for the tax year ended 5 April 2017, relating to the undisclosed written-off Trojan loan and a related penalty, reduced on review to £13,375.05.

TSS Fire Limited and Mr Porter appealed.

Decision

The First Tier Tribunal confirmed both the corporation tax assessment and related penalties.

On Mr Porter's affairs, the First Tier Tribunal was satisfied that HMRC had made a valid discovery that his tax return contained an insufficiency of tax arising from the written-off Trojan loan. However, due to unclear instructions within HMRC, the assessment was for the incorrect sum. The taxpayer therefore challenged its validity.

The First Tier Tribunal agreed with HMRC that s.114(2) TMA 1970 applied to validate any error in the discovery assessment. Broadly, the error was not within the discovery itself, but rather in the assessment and, by the time the assessment was issued, Mr Porter had received a penalty explanation letter using the correct figures.

On the penalties, the tribunal considered these to be correct. The judge said it was 'inconceivable' that the taxpayer thought there would be no tax consequence of writing off the loan.

TSS Fire Limited’s appeal was dismissed.

TSS Fire Limited and Mr Paul Porter v HMRC (TC09257)

Adapted from the case summary in Taxation (3 October 2024)

Quarterly instalment payments (Lecture B1463 – 18.05 minutes)

One of the changes that happened as part of the tax raising measures which preceded Finance Year 2023 (commencing 1st April 2023), was the change in definition of companies that would be required to make quarterly instalment payments.

In brief, the situation before the 1st of April 2023 would be that only companies in groups where the group profit exceeded £1.5m would be required to make a quarterly instalment payment. The position now is that one needs to take into account companies which are associated as well. So for accounting periods commencing on or after 1st April 2023, if companies in association have combined profits of over £1.5m there is a requirement for QIP’s to be made. Where there are 2 or 3 companies, the £1.5m threshold is divided by the number of companies. Accordingly, if there are 3 companies in association, the figure comes down to £500k.

When the Government introduced this rule for large companies, it also included in this the associated rules for very large companies. So where very large companies are associated the relevant threshold comes down from £20m and is divided by the number of companies in association. So, if there are 4 companies in association then the threshold comes down to £5m.

The difference between the companies exceeding the £1.5m threshold, as adjusted by the number of companies and the £20m threshold is the lower threshold requires payments in months 7 and 10 of the accounting period and months 13 and 16 i.e. normally one month and four months after the end of the accounting period. For very large companies, the payments are effectively in Real time; i.e. the 14th day of months 3,6,9 and 12 in the Accounting Period.

The other major difference is that the Government gave a one year of grace for companies when they first exceeded the £1.5m threshold. This is of particular relevance now as companies who exceeded the threshold for the first time from the 1st of April 2023 will have used up their year of grace and will now be faced with the quarterly instalment payment regime.

As you will see in the example, this has the peculiar effect of requiring the first quarterly instalment payments for 2025 before the full payment for 2024 is due. This effectively compresses the time period for paying 2 years of CT into a period of 9 months as is show in the example, a company could be paying 2 years of CT between October 2024 and July 2025. This well could have a serious effect on cash flow if this has not been properly planned.

Example

Kirsty Wellesley owns 100% of KW Properties Limited and 100% of KW Consultancy Limited. Both companies have made profits in their year ended 31 March 2022 accounts in the region of £1 million and are expected to do so for the foreseeable future. What will their tax bills be in 2024 and 2025 assuming all chargeable at 25%?

The profit limit is £750,000 (£1.5m ÷ 2), so both companies must pay QIPs from 2025 (because 2024 is a period of grace).

Accounting period	**Payment date(s)**
Year ended 31 March 2022	1 January 2023
Year ended 31 March 2023	1 January 2024
Year ended 31 March 2024	1 January 2025

Year ended 31 March 2025 – QIPs commence so tax is payable:

14 October 2024 (25%),

14 January 2025 (25%),

14 April 2025 (25%),

14 July 2025 (25%)

The tax payable for the years ended March 20204 and 2025 is as follows:

14 October 2024 (25%)	£62,500
1 January 2025 (100%)	£250,000
14 January 2025 (25%)	£62,500
14 April 2025 (25%)	£62,500
14 July 2025 (25%)	£62,500

This means that a total £500,000 is paid within a 9-month window.

Large companies are faced with making effective real time payments in months 3, 6, 9 and 12 of the accounting period. This means that they are paying CT on profits before the accounting period is actually finished. Companies should be reviewing when their year-end occurs. This is particularly the case in a retail business which makes most of its profits in the Christmas trade. Being required to make quarterly instalment payments before one knows the all-important trade of that period is likely to cause significant cash flow and forecasting issues.

Tracking profits and CT payments in real time has become more important as the deadlines for paying corporation tax have become less and less generous.

Contributed by Jeremy Mindell

UK CFC group financing exemption (Lecture B1461 – 18.41 minutes)

Summary - The ECJ annulled the Commission's decision that certain UK rules on the taxation of controlled foreign companies (CFCs) to be State Aid incompatible with the internal market and set aside the judgment of the General Court confirming that decision.

The European Court of Justice of the CJEU (ECJ) issued its judgment in joined cases, an appeal against the General Court's judgment in Joined Cases T- 363/19 and T- 456/19.

According to the Commission, the UK's CFC rules were aimed at preventing the UK companies from using a subsidiary, based in a low or no tax jurisdiction, to avoid taxation in the UK. They allowed the UK authorities to reallocate all profits artificially diverted to an offshore subsidiary back to the UK parent company, where it could be taxed accordingly.

However, between 2013 and 2018, the CFC rules included an exemption for certain financing income (i.e. interest payments received from loans) of multinational groups active in the UK. The Commission considered part of this group financing exemption (GFE) as an unlawful tax advantage. It ordered the UK to recover it from its beneficiaries.

The UK and ITV brought an action against the Commission's 2019 decision.

On 8 June 2022, the General Court dismissed the actions in their entirety (the General Court's 2022 judgment). In particular, the General Court held, among other things, that the Commission did not make an error of assessment in considering that the rules applicable to UK CFCs constituted a separate body of tax rules within the general UK corporation tax system. Furthermore, the General Court held that the Commission did not commit any errors of assessment when it concluded that there was an advantage and that it was a priori selective, since the exemptions at issue derogated from the UK rules applicable to CFCs, in that they introduced a difference in treatment between taxable companies in a comparable situation, in the light of the objective of those rules.

The UK, ITV and two companies of the London Stock Exchange appealed to the ECJ.

Decision

The ECJ held that in determining the reference framework, the Commission should accept the Member State's interpretation of the relevant national law provisions, unless it is able to establish that another interpretation prevails in the Member States' case law or the administrative practice. If such case law or administrative practice does not substantiate the Commission's own interpretation of the national law, that interpretation can only prevail if the Commission can demonstrate that the Member State's interpretation was incompatible with the wording of the relevant provisions. In this case, the UK's interpretation (that the reference framework was the general corporation tax system) was compatible with the relevant provisions of UK tax law.

The ECJ concluded that the rules applicable to CFCs form an integral part of the general corporation tax system in the UK, which they supplement.

They also follow the same logic, according to which profits with a sufficient territorial link with the UK are subject to tax.

Therefore, the general corporation tax system was the correct reference framework for assessing selectivity for the purposes of State aid.

The UK and ITV's appeals were allowed.

UK v Commission (C- 555/22 P), ITV v Commission and others (C- 556/22 P) and LSEGH (Luxembourg) and others v Commission and others (C- 564/22 P)

Adapted from the case summary in Tax Journal (27 September 2024)

R&D claim denied (Lecture B1461 – 18.41 minutes)

Summary – No additional R&D relief was available for the sub-contractor costs as he had not performed any 'meaningful' work and the company's £1.4 million claim for R&D relief was denied as the company was not trading.

Strictly Money Limited had a technology-based entrepreneurial business idea that it was trying to get off the ground. This was a "blockchain-enabled securities trading platform for retail traders and trackers".

However, this business idea was not successful, and the company generated significant losses.

The company claimed:

- Additional SME R&D relief for expenditure on work that was sub-contracted out;
- an R&D tax credit in respect of its significant losses.

HMRC disallowed both claims on the basis that the:

- company was not carrying on a trade during the relevant period;
- subcontractor costs did not relate to R&D carried out on behalf of the company.

The company appealed to the First Tier Tribunal.

Decision

The First Tier Tribunal found that the company's main business activity did not amount to a trade. The technology-based entrepreneurial business what at too early a stage to constitute a trade; it was still very much an idea that was not commercially viable. However, the company did provide some unconnected consultancy work as a sideline and this was held to be a trade.

Looking first at the sub-contracted costs, no additional R&D relief was available as, during the relevant period, the subcontractor had not performed any 'meaningful' work for the company and so the expenses had not been incurred wholly and exclusively for the trade.

The Tribunal moved on to consider what was needed to get an additional deduction under s1044 CTA 2009, stating that, as well as carrying on a trade, the £1,439,000 of expenditure needed to be an allowable trading deduction as well as qualifying contracted-out R&D expenditure.

The First Tier Tribunal stated that, given its finding that the sub-contractor undertook no meaningful work for the company during the period, the £1.4 million was not deductible. The expenses needed to have been incurred wholly and exclusively for the purposes of a trade, but viewed realistically, this expenditure was not for any business purpose.

The remaining £39,000 was found to relate to the proposed business activity, but this did not constitute a trade. It did not relate to the "sideline" trading consulting activity. Consequently, it was not allowable as a deduction from the profits of a trade.

The appeal was dismissed.

Strictly Money Limited v HMRC (TC09296)

VAT and other indirect taxes

Application to join VAT group (Lecture B1465 – 14.57 minutes)

Summary - An application to include a US entity with a UK branch into an existing Barclays VAT group was denied as at the time the application was made, the UK branch lacked sufficient UK based human and technical resources to have been a fixed establishment.

Barclays Service Corporation was a private corporation with limited liability, registered in the US state of Delaware that supplied services to other members of the Barclays group, including members of a UK VAT group.

In July 2017, Barclays Service Corporation registered its UK branch with Companies House. This branch was involved in the monitoring and updating of intragroup agreements between Barclays Service Corporation and the entities to which the company provided its services. The branch employed four members of staff, all of whom held other roles within the Barclays organisation before commencing employment with the UK Branch. Employment contracts were signed on 8/9 January 2018, with three stating that their start date for work was to be no later than 1 December 2017.

On 1 December 2017, an application was made to treat Barclays Service Corporation as a member of the UK VAT group and so avoid accounting for millions of pounds each year as supplies to UK service recipients would not no longer fall under the reverse charge mechanism. It was expected that this would lead to a cost saving for the group of between £15 to £20 million.

HMRC rejected the application on the grounds:

1. Barclays Service Corporation was not eligible to join the VAT group as it did not have a UK fixed establishment at the time of the application;

2. Conforming construction meant UK law was wrong as under EU law only the branch would be included, and not the Delaware company;

3. If Barclays Service Corporation did have a UK fixed establishment, the application should be refused under 'protection of revenue' powers (s.43B(5)(c) VATA 1994). HMRC considered that the UK branch was set up in order to remove substantial supplies provided from outside the UK from a charge to UK VAT.

Decision

When considering whether a fixed establishment existed in the UK at the time of the VAT grouping application, the First Tier Tribunal stated that it was necessary to consider what human and technical resources were available to the UK Branch as at 1 December 2017 and in doing so it was clear from Dong Yang Electronics sp z oo (Case C-547/18) the Tribunal should consider substance rather than legal form.

Despite three UK members of staff being contracted to start by 1 December 2017, two of those staff members had not started work by this time. The third employee did send several emails relating to the UK branch on 1 December 2017 but continued to spend the vast majority of their time working for another Barclays entity.

Further, no evidence was provided to confirm that the branch was allowed to occupy its UK office space on 1 December. Consequently, the First Tier Tribunal found that the branch did not have sufficient UK based human and technical resources to make a meaningful commercial contribution. With no UK fixed establishment, the company was not eligible to join the VAT group.

Although not necessary, the First Tier Tribunal continued to consider the two other arguments.

As stated, it was common ground that the UK has always applied a whole establishment construction of s.43A VATA 1994. The Tribunal found that to depart from this view would give rise to practical repercussions and:

> "it would not be possible, or proper, for us to evaluate the practical repercussions of what in effect would be a new regime that would be fundamentally different from that currently in place as understood by HMRC and HM Treasury."

Finally, on the 'protection of revenue powers' issue, the First Tier Tribunal stated that if the company had been found to have a UK fixed establishment, the VAT savings that would have been made were the normal consequences of VAT grouping, which meant that the VAT application would have been accepted.

Barclays Service Corporation and Barclays Execution Services Limited v HMRC (TC09275)

Intra-group supplies (Lecture B1465 – 14.57 minutes)

Summary – Intra group supplies between members of an EU VAT group were outside the scope of VAT, irrespective of whether the effect of VAT grouping was a 'loss of tax'.

S, a German foundation governed by public law, was the controlling company of a university medical department and of another company, U-GmbH. The companies were part of a German VAT group.

S carried out economic activities in its buildings which were subject to VAT. It also used the lecture rooms and other parts of the buildings for teaching students, acting as a public authority which was not regarded as a taxable person for VAT.

U-GmbH provided a number of services to S including cleaning services in respect of all of the building complex (patients' rooms, corridors, operating theatres, lecture rooms and laboratories). These services were treated as intra group and so outside the scope of VAT.

Initially the German tax authorities took the view that U's cleaning services were not subject to VAT as they were supplied within a VAT group. However, later the German tax authorities argued that as the cleaning had been provided to S "for purposes other than that of the business", there was a deemed supply chargeable to VAT.

On appeal, the national court referred the dispute to the CJEU asking:

1. Did the EU VAT grouping provisions effectively remove intra-group supplies from the scope of VAT?

2. Does it make a difference if the recipient of the supply of services was not (or was only partly) entitled to deduct input tax, and there was therefore a risk of tax losses? Should intra-group supplies then be brought within the scope of VAT and so subject to VAT?

Decision

The CJEU ruled that services for consideration between VAT group members were not subject to VAT as group members are treated as a single taxable person, and the supply of intra-group services would not be subject to VAT. VAT group members are not separate taxable persons. A VAT group is a single person rather than an administrative simplification

The CJEU rejected the second question stating that within a VAT group, the right to deduct input tax applies to the group, not its individual members. Any risk of tax loss results from the application of input tax recovery rules, and not from the VAT grouping rules.

Under Finanzamt T v S, once companies form part of a VAT group, their previous economic activities cease to exist. The CJEU findings are a post-Brexit decision, but it will be interesting to see how HMRC and the UK courts view this decision going forward, and whether it will impact cases such as Hotel La Tour and Prudential Assurance.

CJEU (Case C-184/23): Finanzamt T v S

Trading issues during COVID **(Lecture B1465 – 14.57 minutes)**

Summary – Continuing to work for the NHS during a national health crisis, despite payment for work done being delayed, constituted a reasonable excuse.

MPMH Construction Ltd carried out 'highly specialised construction work’ for the NHS and other government bodies.

The company had paid its VAT liabilities and/or filed its returns late for a number of periods since 11/2017 and had reached the 15% penalty level. The company paid these surcharges without any dispute, accepting that they were due.

During the COVID pandemic, work reduced but the company was able to continue working for various NHS boards. The NHS Trusts still expected the company to fulfil its contractual obligations, but the company experienced major operational challenges as a result of weekly changes in government guidance, the need for PPE and social distancing, staff being of sick or shielding at home causing sites to close. Further, sourcing materials became a major problem. With NHS employees off sick or working at home, invoice payment was much slower than normal. Indeed, between December 2021 and October 2022 over half a million pounds was due in respect of NHS contracts. Finance teams were frequently not contactable and the company had to wait for invoices to be paid for far longer periods of time than was normal. The company claimed that this led to serious cash flow issues, resulting in VAT not being paid in full on the due dates. Indeed, the company defaulted for the five periods 02/2021 to 02/2022, incurring just under £250,000 in penalties, all calculated at the 15% rate.

The company appealed these penalties, arguing that it had a reasonable excuse because of genuine cash flow and trading problems caused by the COVID pandemic.

The company stated that it never tried to avoid its VAT obligations nor unreasonably withhold payment. Indeed, the company's VAT advisers wrote to HMRC on 31 October 2022 offering to enter into a time to pay arrangement but no reply was received. In the meantime, the company continued to make payments towards its outstanding balance.

HMRC highlighted the company's poor compliance record prior to the pandemic.

Decision

The First Tier Tribunal stated that the company's poor compliance record prior to the appeal was irrelevant. The company's director had communicated with HMRC about its cash flow issues but their explanations seemed to 'fall on deaf ears'. If anything, the company's track record strengthened the company's case as previously the company had not objected to any of the surcharges raised. It only challenged the ones caused by the extreme difficulties faced during the COVID-related periods.

The First Tier Tribunal stated that the director was 'an honest and truthful witness'; further, the company's COVID-related trading problems were 'unplanned, unexpected and unpredictable'. The Tribunal found that the company had acted reasonably by carrying on working for the NHS Trusts, despite not being paid.

During the COVID pandemic, a national health emergency, the company worked exclusively for the NHS. With a public duty to continue to supply its services to the NHS, the company continued with its work, despite the cash flow difficulties it was faced with as a result of the increasing NHS payment delays. With NHS contracts forming pretty much 100% of the company's business, it was not able to overcome is cashflow problems. The circumstances of this business were different from most others as they were working for the NHS, and the problems it faced were extreme. This was a reasonable excuse.

In the Tribunal's view:

> "…not even the most diligent and responsible taxpayer, intending to comply with its tax obligations could have predicted or planned for these issues……Short of ceasing to trade, there was little else the appellant company could do, other than pay its VAT late."

The surcharges were dismissed.

MPMH Construction Ltd v HMRC (TC09264)

Supply of legal services (Lecture B1465 – 14.57 minutes)

Summary – There was no direct link to taxable supplies made by the taxpayer and so no input tax could be claimed.

Visual Investments International Limited:

- owned most of the shares in a separate company Broadcasting Investment Group Limited which was not registered for VAT and 39% of the shares in another company;

- invested in start-up structures and provided consultancy services 'to help them reach their full potential';
- claimed input tax on the cost of legal fees provided by a firm of lawyers, Withers LLP. The services related to a 'shareholder dispute' involving another company and related to professional fees incurred ‘to protect their investment'.

HMRC refused the claim, concluding that Broadcasting Investment Group Ltd was the company 'most closely connected' with the supply of legal services, but this company was neither VAT registered nor part of a VAT group. The fact that Visual Investments International Limited paid for the services was irrelevant and, as a separate issue, there was no 'direct and immediate link' between the dispute and the taxable supplies made by Visual Investments International Limited. Input tax was therefore blocked by virtue of s.24-26 VATA 1994.

Visual Investments International Limited appealed against the assessments raised, totalling over £50,000 for periods 12/18 to 06/21. The company’s view was that the solicitors had an obligation to provide legal services to them and there was a direct link between these costs and future supplies of taxable management services to be made by them.

Decision

The First Tier Tribunal agreed with HMRC that the legal fees related to a shareholder dispute and the management consultancy services were only a 'by-product of the litigation'. Broadcasting Investment Group Limited was most closely connected with the lawsuit, as it had suffered from the breach of the agreement. HMRC was correct to disallow the input tax claim.

On the separate issue concerning which entity or person was receiving the supply of legal services, the Tribunal concluded that there were three separate claimants, Visual Investments International Limited, Broadcasting Investment Group Limited and the director personally. If the input tax claim had passed the 'direct and immediate link' test, an apportionment of one-third input tax to each would have been justified. However, that calculation was irrelevant because there was no direct link to taxable supplies made by Visual anyway, so no input tax could be claimed.

The appeal was dismissed.

Visual Investments International Ltd v HMRC (TC9292)

Adapted from the case summary in Taxation (3 October 2024)

Guidelines for Compliance (Lecture B1465 – 14.57 minutes)

HMRC have issued Guideline for Compliance no.8, “Help with VAT compliance controls”. It is concerned with procedures and internal controls rather than any technical VAT issues. It is “designed to help you understand our expectations as you plan, carry out, and review the accounting and compliance processes that ensure VAT is accurately declared by your business.” In its approach it is reminiscent of the Tax Toolkits published by HMRC – detailed documents that identify risks of non-compliance and suggest ways of mitigating those risks.

The guideline is divided into a number of detailed subsections:

1. General approach to VAT compliance controls
2. Order to cash – dealing with systems to record sales
3. Procure to pay – dealing with systems to record purchases
4. Employee expenses (see below)
5. Record to report
6. VAT reporting
7. VAT reporting – manual adjustments
8. Outsourcing
9. Next steps – correcting errors and guidance

As an example of the content, this is a list of "control points" at the start of the section on employee expenses:

1. An expense policy should be in place and communicated to managers and employees.
2. The expense policy should specify examples of invalid claims, including personal and non-business use.
3. Access to the expenses system should be controlled through job profiles.
4. Ensure employees are trained to use the system accurately, including valid types of expense, VAT treatment, and the evidence required for input tax claims.
5. A valid VAT invoice or VAT receipt must be held to claim input tax. You can reclaim VAT on supplies of £25 or less without a receipt, if you can show that the supplier is VAT registered.
6. Automatic VAT calculation based on type and tax code is preferred to manual entry.
7. Data entry validation should be in place for location, dates and VAT value if entered.
8. Duplicate entries should be detected and queried.
9. Input tax must only be claimed in accordance with applicable employee subsistence rules.
10. Input tax must only be claimed in accordance with the rules on motoring expenses.
11. Input tax must only be claimed in accordance with the business entertainment rules.
12. Input tax must only be claimed in accordance with applicable rules on employee mobile phone call charges.
13. Workflow ensures that manager authorisation is required before posting to ledgers.
14. Ensure interface failures with the main accounting system are reported and followed up.

The Guidelines for Compliance are generally aimed at larger businesses, but the approach of this document could be adapted for use by smaller ones as well. It is likely to indicate what HMRC officers will look for and ask about when carrying out assurance visits to larger businesses in future.

www.gov.uk/government/publications/help-with-vat-compliance-controls-guidelines-for-compliance-gfc8

Private school fees – registering for VAT (Lecture B1464 – 22.40 minutes)

On 10 October 2024, HMRC issued guidance on registering for VAT.

VAT registration

Schools will be subject to the same compulsory and voluntary VAT registration rules as normal businesses. VAT registration will be available to schools from 30 October for those schools that only have exempt income at present.

2025 fees paid prior to 29 July 2024

Some parents prepaid their 2025 fees prior to the government announcement on 29 July 2024. Whether these arrangements work will depend on whether a tax point was created pre 29 July 2024.

HMRC will scrutinise arrangements that were set up prior to 29 July 2024, where lump sum payments were made but with invoices failing to specify which terms' fees the payment related to.

2025 fee payments between 29 July 2024 and 29 October 2024

The guidance states that these will be subject to VAT from the later of either the first date of the school term that the fees have been paid for or 1 January 2025 so in most cases, 6 January 2025, when the Spring term starts.

So if a school received £100,000 for private school education on 28 October 2024 for the school term starting 6 January 2025 the tax point will be 6 January 2025.

On 8 December 2024 the school will be aware that the £90,000 VAT threshold will be breached in the next 30 days. The school must be compulsory registered from 8 December 2024 unless they decide to voluntarily register from an earlier date. The school has 30 days to notify HMRC of their VAT registration obligation. Any 2025 fees received on or after 8 December 2024 will be subject to VAT.

2025 fee payments on and after 30 October 2024

The guidance states that any fees received from 30 October 2024 for school terms starting from 1 January 2025 onwards will create a tax point on the date the school receives the payment. This appears to allow the school to receive fees relating to the 2025 year without charging VAT!

The school will only charge VAT once VAT registered so some parents could offer to pay their fees in early November before the school has to compulsory register. If the Spring Term fees were £8,000 (say) the first eleven lucky parents could be paying their fees before the school was VAT registered.

Maybe the school would preserve this advantage for parents that have said they will have to withdraw their child from school because of the VAT?

If the school could avoid the 30 day look forward test it could easily apply to more parents. If most parents are paying in late December following the school sending out the Spring Term Fee notes on 8 December (say) the look forward test creates a VAT registration date of 8 December. Any parents approaching the school in November might well trigger the historic 12 month test at end of November but the registration is effective from 1 January 2025 under the compulsory test. The look forward test is likely to create an earlier date BUT was there any day prior to 8 December (say) when the school knew their taxable income in next 30 days would breach £90k? Ad hoc requests from parents in November might mean the 30 day look forward test is not breached until the 8 December (say)

In the governments rush to bring these rules have they created opportunity!

https://www.gov.uk/guidance/check-if-you-must-register-for-vat-if-you-receive-private-school-fees

Private school fees – goods and services (Lecture B1464 – 22.40 minutes)

On 10 October 2024, HMRC issued further guidance on goods and services bought and sold, which is summarised overleaf.

What is VAT charged on?

VAT will be due on the total of everything that is received in return for providing education to the student so including the amount paid by the parent, as well as any external bursary that may be paid for the education of that student.

Application and registration fees paid during the application process are standard rated.

Where there is a grant received to cover a specific pupil's educational fees, the whole fee will be subject to VAT, as there is a direct link between the service and payment received.

By contrast, block grant funding that does not relate to individual pupils will usually be outside the scope of VAT. Free places offered by the school ae non-business, which can affect input tax recovery under partial exemption.

When a private school is named in the education health care plan of a student and the local authority funds the place of the student, VAT will be charged to the local authority on the fees but local authorities will be able to reclaim VAT incurred using the existing 'section 33' processes.

Single or mixed supply?

A package of education for a single fee will normally be treated as a single supply for VAT, with a single VAT liability, and will include board and lodging fees. However, in some circumstances, certain fees could be treated as separate supplies, and the invoice should show the rate of VAT that has been applied to each supply.

For example, if a school offers separate school meals alongside the education for a separate charge, these will normally be two different supplies and may have different VAT liabilities. HMRC's guidance currently states that such meals would be exempt as 'closely related' to education.

From the guidance, it also appears that transport to and from school should be treated as a separate exempt 'closely related' to education supply. Should this not be zero-rated transport as the schools are likely to be using their own 10+ seater minibuses? When schools were not VAT registered, this did not matter but once registered, the school's will be wanting these supplies to be zero rated for partial exemption purposes.

Welfare exemption

Where the welfare is considered to be secondary to the education, this will be seen as a single supply of education for VAT purposes.

However, where the main (larger) element of the supply is welfare, the supply may qualify for the welfare exemption. The guidance gives the example of where supervision and guidance is provided to a vulnerable person to develop a capacity to live independently and complete everyday tasks. This may be listed in an Education Health Care Plan.

Goods or services supplied

To be VAT exempt, the goods or services must be supplied separately from the main education but qualify as being closely related to the supply of education, such as selling stationery.

Nursery classes

Provided a class is made up wholly of children below compulsory school age, the VAT exemption will apply.

However, where the class includes any children of compulsory school age for who a fee is received, the whole of the class will be subject to VAT.

Further education colleges

Where a fee is received by a college providing full time 'A' level tuition, this will be liable to VAT as it is education suitable for 16- to 19-year-olds.

However, education normally targeted at students over 19 years old will not be affected by these changes. This will include undergraduate and postgraduate education.

Donations and voluntary contributions

A donation of money or a voluntary contribution will not be chargeable to VAT provided the:

- donor gives it of their own free will;
- donor or their beneficiary does not receive anything in return;

- the donation is not subject to any terms or conditions.

This implies that where a donation is made in return for free or discounted fees, the donation is likely to be treated as standard rated consideration.

Reclaiming VAT on supplies

Schools can reclaim VAT relating to its taxable education and boarding but not on purchases used exclusively for non-business purposes which must be disallowed.

Schools are likely to making both taxable and exempt supplies, making them partially exempt businesses subject to the normal partial exemption rules for reclaiming VAT.

Where VAT has been incurred on large capital items, VAT recovery will fall within the capital goods scheme. Where large capital projects have been completed in the last ten years, this should create cash windfalls for the schools.

Pre-registration expenses

A school may be able to reclaim VAT incurred prior to registration under the normal pre-registration rules relating to goods (4 years) and services (6 months).

The guidance states that the pre-registration input tax relating to goods may need to be apportioned over their economic life (normally 5 years) to reflect the split of taxable and exempt use. This does not sound like HMRC are going to accept full recovery and the first VAT return could well be complicated.

School trips

If a school 'buys in' travel services related to a school trip (for example, transport or accommodation) that are then resold to pupils they may be treated as a tour operator for VAT purposes and TOMS will apply.

https://www.gov.uk/guidance/charging-and-reclaiming-vat-on-goods-and-services-related-to-private-school-fees