Tolley®CPD

October 2018

Disclaimer

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

CONTENTS

Personal tax ... 5
Mileage Rates & Electric Cars (Lecture B1097 - 11.17 minutes) ... 5
Are football referees employees? (Lecture P1096 – 17.38 minutes) ... 8
Fuel card benefit (Lecture P1096 – 17.38 minutes) ... 9
Trivial benefits exemption (Lecture P1097 – 12.16 minutes) ... 10
SAYE savings holiday extended ... 11
Postgraduate Loans (Lecture P1096 – 17.38 minutes) ... 11
Top slicing relief (Lecture P1098 – 13.51 minutes) ... 11
Help-to-save scheme now live (Lecture P1096 – 17.38 minutes) ... 16

Capital Taxes ... 17
Irrecoverable loan write off (Lecture P1096 – 17.38 minutes) ... 17
IHT planning – Nil rate band, life policies and excluded trusts (Lecture P1099 - 19.06 minutes) ... 18
Using a trust to reduce CGT (Lecture P1100 - 17.54 minutes) ... 21

Administration ... 23
Meaning of consent (Lecture P1096 – 17.38 minutes) ... 23
Late payment of accelerated payment notice ... 24
Partnerships using Manage and Register Pension Scheme Service ... 25
Annual returns of information for 2017/18 pensions schemes ... 25
New authorisation regime for Master Trusts ... 25
The Agent Services Account (Lecture P1096 – 17.38 minutes) ... 26
Temporary agent authorisation for digital disclosure service ... 27

Deadlines ... 28

HMRC News ... 30
Budget announcement ... 30
Class 2 U Turn (Lecture B1096 – 15.15 minutes) ... 30
HMRC Guidance – No Deal Brexit (Lecture B1099 – 14.28 minutes) ... 30
Customs Duty post Brexit ... 34
State aid control in a Brexit 'no deal' scenario ... 35
Umbrella company schemes spotlight ... 36

Business Taxation ... 38
Self-employed exotic dancer (Lecture B1076 – 15.15 minutes) ... 38
Loans written off (Lecture B1076 – 15.15 minutes) ... 38
Corporate interest restriction updated guidance ... 39
Carried-forward losses – ICAEW request updated guidance ... 41
Jersey, Guernsey and Isle of Man DTAs ... 41
CbC reporting (BEPS Action 13) implementation guidance ... 43
Non-taxation of McDonald's profits ... 43
Basic loan relationship principles (Lecture B1078 – 18.56 minutes) ... 45

VAT 48
Supplies of digital services (Lecture B1096 – 15.15 minutes) 48
R&C Brief 6/2018 (Lecture B1096 – 15.15 minutes) 48
VAT information sheet 7/2018 (Lecture B1096 – 15.15 minutes) 49
Betting and gambling machines – Two recent cases 50
Place of supply for cars 52
Fish and chip takings (Lecture B1096 – 15.15 minutes) 53
Travel and subsistence salary sacrifice 54
Services under a dental plan 54
SME VAT scheme 55
Failure to submit annual VAT return on time (Lecture B1100 – 12.25 minutes) 56
Preparing for MTD for VAT? (Lecture B1096 – 15.15 minutes) 57

Personal tax

Mileage Rates & Electric Cars (Lecture B1097 - 11.17 minutes)

Advisory Fuel Rates

The Advisory Fuel Rates (AFR) only apply when an employer either:

- Reimburses an employee for business travel in a company car; or
- Requires an employee to repay the cost of fuel used for private travel (for instance fuel purchased using a company fuel card).

The Advisory Fuel Rates are different from and separate to Approved Mileage Allowance Payments (AMAPs). AMAPs are payments made to employees for the use of their own vehicle for business purposes. AMAP rates are higher than AFRs as the AMAP rates are designed to include non-fuel costs such as insurance, road tax, servicing and maintenance, all of which would be met by the employer when a company car is provided. Current AMAP rates for cars are 45p per mile for the first 10,000 business miles per tax year and 25p per mile thereafter. The AMAP rate for motorbikes is 24p and cycles is 20p and these rates do not change once 10,000 miles are exceeded.

The Advisory Fuel Rates from 1 September 2018 are:

Engine size	Petrol	LPG
	(Amount per mile)	(Amount per mile)
1,400 cc or less	12p	7p
1,401 – 2,000 cc	15p	9p
Over 2,000 cc	22p	13p

There are different rates for diesel cars;

Engine size	Diesel
	(Amount per mile)
1,600 cc or less	10p
1,601 – 2,000 cc	12p
Over 2,000 cc	13p

There are no special rates for hybrid cars. Hybrids are treated as either petrol or diesel depending on the fuel source.

Tax effects of AFR payments

If an employer pays a rate per mile for business travel no higher than the AFR for the particular engine size and fuel type, HMRC accepts there is no taxable benefit. Payments at or below the AFR are tax and NIC free. No records need to be kept to support the claim. No entries are made on P11Ds or SA returns.

This is particularly generous for hybrid cars as it means that employers can make tax-free payments to their employees at the AFR rates even in cases where the business journey was undertaken wholly or partly using the electric mode of the vehicle. The employee is thereby receiving a tax-free payment for fuel expenses when no fuel is being consumed.

Employers are free to use their own rates of reimbursement in cases where the cost of business travel is higher than the HMRC guideline rates. Supporting evidence is required to justify such payments.

If an employer pays at a rate in excess of the AFR and cannot demonstrate that the fuel cost per mile is higher than HMRC's published rates, a tax charge will arise. The taxable benefit is the excess payment above the AFR. The benefit should be disclosed on the P11D. The excess payment is earnings for Class 1 National Insurance purposes. This means that the excess payment should be subjected to employer and employee NIC through payroll.

Note here that there is no fuel benefit as fuel is not being provided for private mileage.

Electric cars

Manufacturers are pumping billions into the development of electric cars (and hybrid plug-ins) and as a consequence of this we are seeing more and more companies offering Alternative Fuel Vehicles as part of their benefits package. With car benefits for electric cars being reduced to just 2% of the list price from April 2020 (and benefit percentages for hybrids also falling), the choice of ultra-low emission vehicles (ULEVs) by employees makes perfect sense. The knock-on benefits of ULEVs in the form of lower road tax and exemptions from the London congestion charge all adds to the momentum.

Where electric cars are used for business journeys, the employer cannot make tax-free AFR payments to employees as electricity isn't a fuel. Such payments would therefore give rise to a taxable benefit.

However, running an electric car isn't cost-free as electricity isn't a free commodity and has to be paid for. Therefore, if an employee charges his electric car at home then uses that car for business mileage, it is reasonable that such costs should be reimbursed by the employer without tax consequence. The difficulty is working out the cost.

Until recently this was done by the employee estimating the costs of charging the car battery, calculating the average range of the car on that charged battery and, by dividing the former by the latter, deducing the average electricity cost per mile of running the car. This average would of course depend on the make of car and the particular energy tariff to which the employee was subscribed to, but industry figures suggest that for employees charging their vehicles overnight (when electricity is cheaper) a cost per mile of somewhere around 3.75p would be the norm. The cost per mile could be as much as 6p if different energy tariffs applied.

As an alternative, employers could calculate their own reimbursement mileage rate using the manufacturers' specified 'miles per kWh figure' and the actual electricity costs of charging the vehicle, but as the latter were obtained from the employee and were again tariff dependent, this hardly made the process much simpler.

Things have become an awful lot easier from 1 September 2018 because, in the wake of mounting pressure from the industry, HMRC has introduced a new Advisory Electricity Rate (AER). Employers can now pay up to the Advisory Electricity Rate when reimbursing their employees for business travel in a fully electric company car without this giving rise to a taxable benefit.

The AER has been set at 4 pence per mile. Hybrid cars will continue to be treated as either petrol or diesel vehicles for mileage reimbursement purposes (no separate hybrid rate has been published).

On a similar basis to Advisory Fuel Rates, employers can use their own rate which better reflects their circumstances if, for example, their cars are more efficient, or if the cost of business travel is higher than the guideline rate. However, if employers pay a rate that is higher than the AER and they cannot demonstrate that the electricity cost per mile is higher, the excess will be taxed as a benefit and treated as earnings for Class 1 NICs. To avoid the compliance hassles associated with what will be relatively small sums of money, it is imagined that the vast majority of employers will reimburse at 4p and be done with it.

It may be that an employee will need to charge his car on-the-go at a public charging site. Many public charging sites are free. However, if the employee has to pay for a charge – and does so via a company credit card – there should be no tax charge if the company is only paying to charge the vehicle for business mileage. If not, the company should ask the employee to contribute the "private" element to avoid a tax / NIC charge.

As an aside here it is worth mentioning that from 6 April 2018, employees charging their electric vehicle at work – be that a company provided car or their own car - are not liable to pay tax on the value of the electricity used. However the provision by an employer of a chargepoint for an employee at their home does give rise to a taxable benefit based on the cost of providing that chargepoint. There is no apportionment of this benefit based on business and private mileage.

Mileage expenses for private electric vehicles

The new AER rate only applies for company-provided electric cars.

Where an employee uses his own electric car for work purposes, reimbursement can be made at the AMAP rates (45p per mile up to 10,000 miles, 25p per mile thereafter).

This is because AMAP is not fuel dependent and incorporates the general costs of owning and running the car.

Employees doing a reasonable amount of business mileage may therefore be better off by taking the cash allowance offered by many employers (albeit that this will be taxable as salary) and purchasing their own electric vehicles to use for work.

With average electricity costs of 4-5p per mile and no road tax, an employee will receive substantially more in compensation than he actually spends in running the car. For example, an employee doing 10,000 business miles in the tax year (an average of just 40 miles a day) who receives a 45p per mile allowance from his employer, would be making a tax-free profit of circa £4,000 (equating to a pay rise of £7,000 gross). Plus it's good for both the environment and the conscience.

If an employer does not fully reimburse an employee for the cost of business mileage in the employee's own electric car in accordance with the AMAP rules, that employee is entitled to tax relief on the remainder of this amount. Some employers may have a policy of paying a lower amount per business mile to employees using their own electric cars to more closely reflect actual costs. Employees in this position can make an expense claim for the difference between the reimbursed rate and 45p via their SA returns.

Contributed by Steve Sanders

Are football referees employees? (Lecture P1096 – 17.38 minutes)

Summary – Payments to "Select group" referees officiating at Premier League matches did not fall within the PAYE system

Professional Game Match Officials Limited is a company limited by guarantee whose three members are the FA, the Premier League and the Football League, now referred to as the English Football League.

The company's role relates to the provision of referees and other match officials for matches in the most significant national football competitions, in particular the Premier League, the FA Cup, and the English Football League, which comprises 72 clubs in the Championship League and Leagues 1 and 2. The FA classifies referees by reference to a number of different levels, ranging from International, then Level 1 (the National List) to Level 9 (trainee referees). There are over 30,000 referees in total, the vast majority at the lower levels.

Professional Game Match Officials Limited organises the referees who officiate in their competitions and employ a number of referees under full-time written contracts. These are referred to as the "Select Group" or "National Group" referees, who at the relevant time primarily refereed Premier League matches. Some of these individuals are also qualified to referee internationally.

At the start of each season, these referees sign an overarching agreement with Professional Game Match Officials Limited. Professional Game Match Officials Limited then offers referees individual match engagement but referees are free to choose whether or not they accept these engagements.

The company runs paid training sessions but attendance is not compulsory. Professional Game Match Officials Limited provides the black kit for matches as well as suits for wearing to and from matches but the referees provide other items including boots, watches, whistles and cards all of which are essential to role of the referee.

This appeal concerned Reg. 80 determinations for 2014/15 and 2015/16 totalling nearly £600,000 of income tax and NICs. HMRC argued that Professional Game Match Officials Limited should have operated PAYE in respect of the national group of referees who they claimed were employees.

Decision

The First Tier Tribunal concluded that there was no mutuality of obligation outside individual match engagements; neither the overarching annual contracts nor the individual engagements were contracts of service

Professional Game Match Officials Limited could withdraw an engagement. The Tribunal noted that referees chose whether or not to accept matches offered to them and if they failed to attend a match they were not paid. Even if a referee agreed to officiate a match, the referee could withdraw.

Once the match was underway, Professional Game Match Officials Limited has no control over referee decisions; the referee's decision was final and only the FA can deal with regulation breaches

The Tribunal found that the referees had no right to substitute another person; if they could not attend a match then Professional Game Match Officials Limited would appoint the replacement.

Although Professional Game Match Officials Limited supplied some kit and ran training courses. Referees supplied key elements of a referee's equipment and were responsible for managing their fitness levels as well as pre-match preparation.

The First Tier Tribunal concluded that the National Group referees were not employed under contracts of service during the periods under appeal, and the appeal was allowed.

Professional Game Match Officials Limited v HMRC (TC06698)

Fuel card benefit **(Lecture P1096 – 17.38 minutes)**

Summary – Payment by fuel card with the private use element reimbursed after the end of the tax year was held to be a taxable benefit

Exel Computer Systems Plc provided cars to employees that were reported correctly to HMRC as benefits. Non-office based employees were able to pay for fuel using a fuel card, that the company initially paid for.

The employees were required to reimburse the private element of their fuel costs and so the company believed there was no fuel benefit and nothing was reported on employee P11Ds.

HMRC disputed this process and raised assessments to recover class 1A NIC and so the company appealed.

Decision

The First Tier Tribunal said the concept of fair bargain applied when employees received something from their employer under the precise same terms as an independent third party. But that this was not the case here. Employees paid for fuel using a company card but reimbursed the employer for their private fuel after the end of the tax year in which they received it. There were no contractual terms or deadlines by which such payments had to be made by employees.

The tribunal noted:

> 'At least 80% of employees have received fuel in April one year and will not have made a payment of any sort until July the following year at the earliest. Of this 80% a significant number did not make any payment in respect of the fuel for a further year.'

They said that no member of the public would be able to defer payment for at least 12 months, sometimes up to two years, without there being a cost such as a penalty or interest for late payment. This was a benefit in the ordinary sense of the word and a benefit in kind for the purposes of ITEPA 2003, s 62(b).

Exel Computer Systems PLC's appeal was dismissed.

However, the Tribunal found HMRC to be time-barred for one of the years because it was outside the limitation period. The fact that the company had made a specified payment on account for the year was not an indication of an explicit agreement or contract between the parties.

Exel Computer Systems PLC v HMRC (TC06561)

Adapted from Taxation (23 August 2018)

Trivial benefits exemption (**Lecture P1097 – 12.16 minutes**)

From 6 April 2016 a statutory exemption has been introduced for trivial benefits. To qualify as a trivial benefit the following conditions must apply:

- The trivial benefit must not be cash or a cash-voucher (s.75 ITEPA 2003)
- The cost of providing the trivial benefit must not exceed £50
- The trivial benefit cannot be provided by way of a contractual obligation or salary sacrifice arrangement
- The trivial benefit must be given for a non-work reason e.g. birthday or social event

For close companies there is a £300 annual cap for directors and other office holders and family members but when those family members are also employees, they will get their own £300 annual cap.

The trivial benefits regime offers tax free extraction within the limits prescribed.

SAYE savings holiday extended

HMRC has updated the specimen SAYE prospectus with effect from 1 September 2018 to show that employees can delay the payment of monthly contributions on a maximum of 12 occasions over the lifespan of the savings contract. The government first announced its intention at Autumn Budget 2017 to extend the SAYE savings holiday from 6 to 12 months.

https://www.gov.uk/government/publications/specimen-save-as-you-earn-saye-prospectus

Postgraduate Loans (Lecture P1096 – 17.38 minutes)

The Department for Education have launched a new Student Loan product known as Postgraduate Loans.

The earliest individuals can start repayment of Postgraduate Loans is April 2019 through PAYE or April 2020 through Self-Assessment.

If clients have a Postgraduate Loan:

- HMRC will send their employer a new Postgraduate start notice (PGL1) to ask them to start taking Postgraduate Loans deductions;
- HMRC will send their employer a new Postgraduate stop notice (PGL2) to ask them to stop taking Postgraduate Loans deductions;
- Individuals may also be liable to repay a Student Loan Plan Type 1 or 2 concurrently with Postgraduate Loans. HMRC will let their employer know this by continuing to send the normal Student Loan start (SL1) and Student Loan stop (SL2) notices as well as PGL1s and PGL2s.

HMRC are working with software developers to finalise the technical specifications.

https://www.gov.uk/government/publications/agent-update-issue-67?utm_source=f3ea109e-2aa7-49dd-a4ea-ce80c4ef1c4b&utm_medium=email&utm_campaign=govuk-notifications&utm_content=immediate

Top slicing relief (Lecture P1098 – 13.51 minutes)

Profits made on the surrender of certain life insurance policies are taxed as income. Such policy gains are savings income and are taxed as the ‘top slice’ of income after dividends.

As the policy gain forms part of taxable income for the year, it will result in a withdrawal of personal allowances if it takes total income above £100,000. [Editor note: there are top slicing relief calculators on the websites of many product providers that you can use to check your calculations. On more than one occasion I have found that these give the wrong tax figure as they do not restrict personal allowances where the policy gain takes income over £100,000. This is because some online calculators take the ‘short cut’ method of just taxing a ‘slice’ of the gain rather than treating the full gain as income. These glitches may have been rectified but you are advised to use these calculators with care.]

As the policy gain is savings income, it will qualify for the savings nil band (if this has not already been used against interest).

Policy gains carry a notional 20% tax credit that means that basic rate taxpayers making such gains will have no further liability.

However, it is unfair to tax the full amount of the policy gain in one tax year when, in reality, the profit accrues over the life of the policy. Relief for this inequity is given in the form of "top slicing relief".

Top slicing relief applies when the policy gain takes a taxpayer from one tax band into another. For example, it will apply when:

(a) Other taxable income falls under the basic rate threshold, but the addition of the policy gain takes the taxpayer into the higher rates; or

(b) Other taxable income falls to be taxed at the higher rates, but the addition of the policy gain takes the taxpayer into the additional rates.

Top slicing relief is not available where the policy-holder would still be a higher rate or an additional rate taxpayer even if the policy gain was ignored.

Tax software should calculate the top slicing relief. However it is important to check that the calculation is correct. The relief is automatic and a formal claim is not necessary.

Where there is only one policy gain, the process for calculating top slicing relief is as follows:

1. Calculate the policy gain. This is normally notified to the taxpayer by the life insurance company.

2. Calculate the extra tax payable on the policy gain by treating it as the top slice of income.

3. Deduct the 20% deemed tax credit.

4. Divide the policy gain by the number of complete years that the policy has been held. This gives the 'annual equivalent'. [The completed years should be shown on the chargeable event certificate provided by the product provider.]

5. Calculate the extra tax payable on the annual equivalent and deduct the deemed 20% tax credit on that annual equivalent. This gives the 'relieved liability'.

6. Multiply the relieved liability by the number of completed policy years.

7. The top slicing relief is the figure at step 2) less the result of step 6).

The top slicing relief is given by way of a deduction from the total tax liability for the tax year (before tax credits such as PAYE). All other tax reducers (e.g., EIS, VCT etc) are deducted before top slicing relief.

Example 1

Mr Robertson is employed on a salary of £40,000. On 1 July 2014, he invested £35,000 in a non-qualifying life insurance policy. On 15 September 2018, he surrendered it and received proceeds of £60,000. His other income for 2018/19 is bank interest of £3,000.

Tax liability 2018/19:

		Non-savings	Savings	Policy gain
		£	£	£
Earnings		40,000		
Interest			3,000	
Policy gain				25,000
Less: PA		(11,850)	______	______
Taxable		28,150	3,000	25,000
Tax:				
28,150	@ 20%			5,630
500	@ 0%			0
2,500	@ 20%			500
31,150				
3,350	@ 20%			670
34,500				
21,650	@ 40%			8,660
				15,460
Less: Top slicing relief (W)				(2,010)
Tax liability				13,450
Less: Tax credit on policy gain		£25,000 @ 20%		(5,000)
Tax due before PAYE				8,450

The policy gain is taxed as the top slice of total income, so the extra tax due on the gain is:

	£
Tax on policy gain £(670 + 8,660)	9,330
Less: Notional tax credit (£25,000 @ 20%)	(5,000)
Extra tax on policy gain	4,330
Annual equivalent of policy gain: £25,000 / 4	6,250
Extra tax on annual equivalent:	
£3,350 @ 20%	670
£2,900 @ 40%	1,160
	1,830
Less: Notional tax credit (£6,250 @ 20%)	(1,250)
Relieved liability	580
Relieved liability x policy years: £580 x 4	2,320
Top slicing relief:	
Extra tax on policy gain	4,330
Less: Relieved liability x policy years	(2,320)
Top slicing relief	2,010

Scottish Taxpayers

Scottish rates of income tax are paid by "Scottish Taxpayers" (broadly individuals whose main place of residence is in Scotland).

The Scottish rates apply to non-savings income only – i.e., employment income, rental income, certain trust income and pension income. They do not apply to savings and dividend income. Chargeable event gains made by individuals resident in Scotland are therefore taxed at the normal UK savings rates.

When calculating tax on savings income of Scottish taxpayers, we use the UK basic rate threshold of £34,500 (not the lower Scottish non-savings threshold).

This will mean that any top slicing relief computations will be the same for a Scottish taxpayer as they are for taxpayers living in the rest of the UK.

Example 2

Assume that in Example 1 above, Mr Robertson lived in Scotland. His tax liability for 2018/19 would be:

			Non-savings	Savings	Policy gain
			£	£	£
Earnings			40,000		
Interest				3,000	
Policy gain					25,000
Less: PA			(11,850)		
Taxable			28,150	3,000	25,000
Tax:					
2,000	@ 19%				380
10,150	@ 20%				2,030
16,000	@ 21%				3,360
500	@ 0%				0
2,500	@ 20%				500
31,150					
3,350	@ 20%				670
34,500					
21,650	@ 40%				8,660
					15,600
Less: Top slicing relief (as above)					(2,010)
Tax liability					13,590
Less: Tax credit on policy gain		£25,000 @ 20%			(5,000)
Tax due before PAYE					8,590

Contributed by Steve Sanders

Help-to-save scheme now live (Lecture P1096 – 17.38 minutes)

The launch of this scheme follows an 8-month trial, with over 45,000 customers who deposited in excess of £3 million. Help-to-save is a type of savings account aimed at people entitled to Working Tax Credit or receiving Universal Credit to get a bonus of 50p for every £1 they save over 4 years. The accounts will be available to open from 12 September 2018 and up to September 2023.

Account holders can save up to £50 each month for 4 years from the date the account is opened. After 2 years, holders receive a 50% tax-free bonus on savings. If saving continues, there is another 50% tax-free bonus after 4 years. That means that on maximum savings of £2,400 over 4 years, the overall bonus would be £1,200.

Savers can apply online or use the HMRC app.

Who can open an account?

The scheme is open to UK residents who are entitled to Working Tax Credit and receiving Working Tax Credit or Child Tax Credit payments as well as those claiming Universal Credit who have a household or individual income of at least £542.88 for their last monthly assessment period (though note that payments from Universal Credit are not considered to be part of household income).

People living overseas who meet either of these eligibility conditions can apply for an account if they are: a Crown servant (or their spouse or civil partner); a member of the British armed forces (or their spouse or civil partner).

Withdrawing money

Account holders can withdraw money at any time although this could affect the size of their bonus.

If the individual's situation changes and they stop receiving Working Tax Credit or Universal Credit, they can still save and receive any bonus that they are entitled to.

www.gov.uk/government/news/savers-to-earn-50p-for-every-1-saved-thanks-to-help-to-save

Capital Taxes

Irrecoverable loan write off (Lecture P1096 – 17.38 minutes)

Summary – Loans written off were irrecoverable and were an allowable loss for capital gains tax purposes.

Douglas Atherley had been a stockbroker but, having studied design on both a part and full time basis, he decided to make a living as an interior designer and set up Kinari Design Limited in 2002, in the high end residential market. Douglas Atherley funded Kinari Design Limited through a loan account rather than through share capital.

Kinari Design Limited struggled to make its name in the high end design market, making substantial losses in the years concerned. In January 2013 Douglas discussed the prospect of being repaid the full amount of the loan to Kinari Design Ltd. The global and UK economy had consistently under-performed against forecasts since 2008. He decided to write off £350,000 of the £616,959 loans outstanding and to wind down the business in an orderly fashion ensuring all external creditors were paid. At the end of 2014, Kinari Design Limited implemented a redundancy programme with the layoffs occurred in 2015. The company ceased trading altogether in 2016.

This appeal concerns the loan write off and raises two issues:

1. Whether an allowable loss arose in respect of the part of the loan written off in January 2013 under s.253(3) TCGA 1992; and

2. Whether the loss was not allowable because s.253(12) TCGA 1992 applied.

HMRC argued that the £350,000 loan that was written off was not irrecoverable at the date of the claim because Douglas Atherley had considered it was theoretically possible for the remaining balance to be recovered, and that a loan could not be written off in part only while Kinari continued to trade. Also Douglas Atherley went on to lend a further £65,554 after the write off which is indicative that he thought the loan was repayable. S.253(12) applied to restrict the loss because the step taken to write off part of the loan was an "act " of the lender as referred to in subsection(12). Kinari Design Limited could have borrowed from a bank to repay the loan and there would have been no write off and no allowable loss. They argued that he wrote off the debt to enable him to set the loss against a matching chargeable gain on another asset in the tax year.

Decision

The First Tier Tribunal stated that there was no realistic possibility that a lucrative project could be secured to generate sufficient profit to repay the loan. The assessment by Douglas Atherley that £350,000 of the loan to Kinari Design Limited was irrecoverable was proved not to be fanciful as Kinari Design Limited continued to make losses until its dissolution in 2016. They concluded that there was objective evidence that £350,000 of the principal amount of the loan that was written off was irrecoverable.

It was clear that loans can be written off in part and is specifically contemplated by the words “any outstanding amount of the principal” in s.253 (3)(a).

The Tribunal held that Douglas Atherley should be entitled to claim an allowable loss equal to the amount of principal on the loan claimed stating:

> “We consider that "act" or "arrangement" of the sort referred to in s.253(12) must be the sort of act which would prevent the company repaying the loan. There was no such arrangement or act. A decision to cease to carry on an unprofitable trade cannot be an act to which s.253(12) refers. Nor would a decision to write off part of a loan.”

They also stated:

> “If the Appellant had made a decision to crystalize a loss in 2013 by writing-off part of the loan to match a corresponding amount of gain ….., this would not affect the availability of the loss in circumstances where the loan is objectively irrecoverable.”

They noted that had Douglas Atherley funded Kinari Design Limited with equity capital rather than loans he could have made a negligible value claim and generated a loss of more than £350,000 as the company had accumulated losses of more than £350,000 in January 2013 and no material assets or book of business.

The appeal was allowed in full.

Douglas Atherley v HMRC (TC06610)

IHT planning – Nil rate band, life policies and excluded trusts (Lecture P1099 - 19.06 minutes)

The use of a Discretionary trust – during lifetime, to gain a second nil rate band

Discretionary trusts are very often used in tax planning. All individuals have a nil rate band before they have exposure to inheritance tax on their death, as follows:

- From 6 April 2009 - £325,000;
- This has now been frozen until April 2021.

It is possible for an individual to gift this amount into a trust and so reduce their own wealth for inheritance tax purposes. Should the individual survive seven years, the settlor will then escape inheritance tax on the lifetime gift and will then also be entitled to a further nil rate band that could be utilised against their remaining wealth.

The discretionary trust is a useful vehicle to enable the settlor to gift property into trust and away from their own estates, but still have a certain amount of control over the assets as a trustee.

These are trusts that are established by law and would be expressly created via a trust deed.

If there is a couple, for instance high net worth individuals, they may consider both of them setting up a nil band trust, this is potentially removing £325,000 x 2 = £650,000 from their estates after seven years. If they repeat the planning after seven years, this could amount to

£1,300,000. An IHT saving of £520,000!! And again, in a further seven years – in the period of a little over 14 years, it is possible to utilise three nil rate bands per person.

The tax planning can also be extended by remembering to use the annual exemptions at the time of setting up the trusts or adding in property after the seven years – 2 x annual exemptions = £6,000 which adds an initial tax saving of £2,400. For a joint couple, this would be £4,800. Over the 14 years, the tax saving created by using the annual exemption amounts to £3,000 x 40% x 14 years = £16,800 per person.

A couple can be joint settlors of a single settlement without there being any IHT downside – s44(2) IHTA 1984 states that in a case such as this each will be treated as creating a separate settlement for the purposes of the tax charges.

Avoid the situation where a couple are joint settlors but all the funds come from one sole source as this could appear to be a sole settlor in the eyes of HMRC.

Life policies in trust

The proceeds of a life policy that are paid out on an individual's death would usually be part of the estate and included with the other assets. This then increases the total value of the assets on which there could be an inheritance tax charge.

Once the IHT threshold has been exceeded, the rate of tax charged at death is 40% and this is a considerable chunk of the estate and can often deplete the value left for the beneficiaries named in a will, or that would benefit on intestacy.

One method of tax planning is to assign (place) the life policy into trust. If this is done, the amount paid out on the insured's death is not included in the value of the estate. The value is diverted away from the estate and passed directly to the named beneficiaries, thus avoiding a potential 40% tax charge.

Another advantage to putting a life policy into trust is that anything paid out on death from the policy will not be included in the estate, and will not therefore be tied up until probate is granted. Therefore, the policy can be useful to pay expenses that are necessary at the time of death, in order to help the probate process be carried out more smoothly, such as paying for a funeral, paying the IHT etc.

In addition, this is a useful tool to leave value to individuals without having to share other assets between beneficiaries that might be impractical, or impossible, to divide.

Discretionary trusts are usually used when writing life policies into trust. They give greater scope of beneficiaries and tend not to be as limiting, depending of course on the wishes of the settlor and how the proceeds are intended to be used.

Placing a life policy in trust can be a simple matter and it would entail initially contacting the insurance provider. The policy can then usually be put into trust be the completion of a form that the insurance provider will supply. The form details the name of the policyholder, the name of the insured, details of the beneficiaries and such like, and is not usually a complicated process but can gain much benefit.

Example

Marion had a life insurance policy in place during her lifetime, into which she paid regular premiums each month. On her death, the policy would pay out £50,000.

Marion already owned assets to the tune of £500,000.

She has two options…..

1. Assign the insurance policy into trust and therefore into the hands of the trustees, or

2. She doesn't assign the policy into trust

If Marion were to die during 2016/17, the effect of these two options are as follows:

Under option 1, the insurance proceeds of £50,000 are paid out directly to the trustees and are not included in her estate for IHT purposes. Her IHT liability is therefore £500,000 less £325,000 nil band = £175,000 at 40% = £70,000

Under option 2, the insurance proceeds of £50,000 are added to Marion's estate and the IHT liability is as follows: £500,000 + £50,000 = £550,000 less £325,000 nil band = £225,000 at 40% = £90,000.

Therefore, it can be beneficial from a tax point of view to write insurance policies into trust.

Excluded Property Trusts

A transfer of overseas property into a trust, by a non-UK domiciled individual will not trigger an inheritance tax charge, as this property is 'excluded property' while the individual is non UK domiciled, in accordance with the legislation at s48(3) IHTA 1984.

In addition, it is possible for the non-UK domiciled individual to still be able to benefit from this trust property and retain the inheritance tax advantages as, although normally the gifts with reservation of benefit rules would usually kick in when a settlor enjoys the property he has given away, the legislation at s48(3) for excluded property takes precedence over the GWROB legislation. If any benefit is retained, it should be noted that the trust would be a settlor interested trust for income tax purposes and the income would be assessable on the settlor.

Excluded property trusts are still an effective form of inheritance tax planning for non-UK domiciled individuals with overseas property.

Be sure to consider the tax planning before the individual becomes deemed domiciled in the UK.

If an individual is no longer able to set up an excluded property trust, consider diverting wealth into the hands of other non-UK domiciled family members that have not yet become deemed domiciled in the UK.

Contributed by Amanda Fisher

Using a trust to reduce CGT (Lecture P1100 - 17.54 minutes)

A trust could be used as a means to gifting an asset to another individual that would normally be chargeable to capital gains tax. The trust property can either stay in trust with the individual benefitting from a life interest, or the asset could ultimately be transferred out of the trust to the individual, absolutely.

Example

Bob wants to gift an investment property to his daughter. The property is valued at £325,000 with a base cost of £100,000. In making the gift directly to his daughter, Bob will be making a PET for inheritance tax (no problem so long as he survived the seven years etc) but the transfer will be a capital gains tax event and a potential 28% tax liability is due after the annual exemption etc.

By transferring the property into a trust, this will create a chargeable lifetime transfer for inheritance tax purposes – this is not a problem in this case as the nil rate band of £325,000 will cover this. Survive a further seven years, and Bob will receive a further nil rate band. The transfer of the property into the trust will be chargeable for capital gains tax, however a s260 IHTA 1984 deferral claim can be made to defer the gain to the trustees. In the future, the property can still be transferred on to the daughter, and a holdover claim can then be used again by the trustees, to defer the gain on to the daughter.

To hold a property and secure Principal Private Residence Relief

If a second property is required, but as a second property no principal private residence would be available, consider purchasing through a trust if a beneficiary is likely to live in the property.

Example

Mrs F would like to purchase a property for her daughter to live in while she is at university.

She has the following options:

Option one: purchase the property in her own name – thus increasing her own estate for inheritance tax purposes, should the property increase in value. If she is a high net worth individual, with exposure to IHT, she's also missing the trick of reducing her IHT exposure by not using an opportunity to make a transfer at the time of acquiring the property. She also has the income tax and capital gains tax effects of the property being in her ownership – higher rate tax on income maybe together with the lack of PPR on disposal.

Option two: gift either the cash to enable the daughter to purchase the property in her name, or in fact gift the property itself to the daughter. They may be gaining on the income tax advantage of using personal allowances and minimising higher rate taxes together with the capital gains tax advantages of the daughter achieving PPR relief on disposal of the property. The value of the property in the daughter's estate also goes someway to reducing the parent's estate and using the daughter's own nil rate band. However, the legal ownership of the property in the daughter's name may put off many individuals from taking this option.

Option three: use a trust for ownership of the property. The trust will receive some income which will be taxed at the appropriate rate, but there is always the option to make income distributions to minimise unnecessary income tax. If the daughter resides in the property as their permanent residence, then as a qualifying beneficiary, PPR should be available. Finally, in creating the trust, together with any growth on the value of the property, the advantage is this will be outside everyone's estate from an IHT point of view and therefore tax efficient.

Contributed by Amanda Fisher

Administration

Meaning of consent (Lecture P1096 – 17.38 minutes)

Summary – The Tribunal found in favour of the taxpayer, cancelling late filing penalties, and noted that the email messages received by her did not inform her of the assessments:

Hannah Armstrong was self-employment and had always filed her tax returns on time. In January 2016, she ceased to be self-employed when she became employed. She accepted that HMRC had issued her with a notice to file a return, but wrongly assumed she had no need to declare nil liability.

She was unaware of electronic messages sent by HMRC to her informing her of late payment penalties for failing to file her tax return for 2015/16. On appeal she argued that the notice did not satisfy the condition in paragraph 4(1)(c) Schedule 55 FA 2009. There was no reasonable notice of the penalties, as a notice of a notice is not reasonable notice.

The issue to be decided was what was meant by consent to receive paperless communication from HMRC.

Decision

The judge drew attention to what he considered to be defects in the legislation in place to deal with this and concluded that HMRC had not met the burden of proving that the taxpayer received the notices:

> " … the appellant gave her consent to … be treated by HMRC in the way that the terms and conditions promise, as that is reasonably understood by someone who is not a tax expert."
>
> "..that person would realise from reading the terms and conditions that they would get a notice to file a return sent to their secure mailbox, replacing the paper notices to file, that they would get reminders that returns and payments of tax are becoming due and that they would get statements of their tax position from time to time.
>
> What they would not necessarily realise is that if they came to be in the small minority of late filers, that not only would HMRC send any penalty notices to the secure inbox, but also that any email they sent to alert a person to that notice of penalty would be as bland and uninformative as the emails that the appellant has put in evidence..."

Hannah Armstrong had not explicitly consented to receive penalty notices via her secure inbox and therefore HMRC had not, within the specific terms of the regulations, validly issued them. As such, the penalties were improperly raised and were cancelled.

The appeal was allowed.

Hannah Armstrong v HMRC (TC06606)

Late payment of accelerated payment notice

Summary – Given the circumstances, the accountant missing a deadline was a reasonable excuse as the taxpayer clearly took his tax obligations seriously.

Richard Lee participated in tax mitigation arrangements that involved investing in three Cobalt enterprise zone schemes. This appeal concerned two of those schemes.

HMRC opened an enquiry into Mr Lee’s 2007/08 tax return that was extended in January 2010 to include his participation in Cobalt 7 and 8. They issued an accelerated payment notice in connection with that scheme. The due date for payment was 18 May 2017. Mr Lee had also received accelerated payment notices for the other two Cobalt schemes but the payment date for these was 2 June 2017. He emailed his accountant about the relevant dates who said he would include this information in discussions he was having to set up a time-to-pay arrangement but the accountant admitted that, despite the earlier exchanges with his client, he thought the due date for all the schemes was 2 June. He overlooked the fact that the Cobalt 7 and 8 notice was due on 18 May. This had led to the time-to-pay request being submitted late. An agreement was set up for all three schemes. No penalties were imposed for the two accelerated payment notices whose payment date was 2 June. The taxpayer paid all three notices, in accordance with the agreements, taking a loan to ensure that he could settle the tax.

Richard Lee did not dispute the penalty in principle, but said he had a reasonable excuse for the late payment because he had relied on his accountant.

Decision

The First Tier Tribunal said a taxpayer who handed everything to his accountant and said 'get on with it' would not generally have a reasonable excuse if the practitioner failed to do so. However, in this case, Richard Lee had informed his adviser when he received the accelerated payment notice and 'highlighted the deadline'. He followed this up several times and the adviser assured him that everything would be dealt with in time. The accountant made a mistake.

The Tribunal held that Richard Lee had acted 'as an objectively reasonable taxpayer', even 'taking out a loan to make sure he could make the payments' which suggested he was someone who took his tax obligations seriously. He had a reasonable excuse for failure to pay on time and the penalty was cancelled.

Richard Lee’s appeal was allowed.

Richard Lee v HMRC (TC06602)

Partnerships using Manage and Register Pension Scheme Service

Following the launch of the Manage and Register Pension Schemes service in June 2018, HMRC has updated the service so that partnerships can now use the service to register as a scheme administrator and/or apply to register a pension scheme.

To register a partnership as a pension scheme administrator, they will need the partnership Unique Taxpayer Reference (UTR) and details of the individual partners (including their name, address, National Insurance number and Self-Assessment UTR).

www.gov.uk/government/publications/pension-schemes-newsletter-102-august-2018

Annual returns of information for 2017/18 pensions schemes

The annual return of individual information is a statutory return from 6 April 2018 for pension scheme administrators operating relief at source.

The deadline for submitting the 2017/18annual return to HMRC has passed, but there are still returns outstanding from scheme administrators who have submitted interim repayment claims for 2017/18. Any subsequent interim repayments will be withheld, pending receipt of the outstanding information.

If an annual return is submitted but fails processing, HMRC still deem this to be outstanding and will stop any subsequent interim repayments pending successful re-submission. If a submission fails for a third time HMRC will stop all future interim repayments until a further re-submission is received and is deemed successful.

Relief at Source Annual Claims (APSS106) for 2017 to 2018

Pension schemes operating relief at source must submit the APSS106 annual claim for 2017/18 to HMRC by 5 October 2018. HMRC will not process any interim repayment claims until administrators have successfully submitted their form.

www.gov.uk/government/publications/pension-schemes-newsletter-102-august-2018

New authorisation regime for Master Trusts

A new regime came into effect for Master Trusts from 1 October 2018.

Administrators applying to register such pension schemes with HMRC after 1 October 2018 must also apply to The Pensions Regulator for authorisation at the same time. HMRC will not register the scheme until it has been authorised by The Pensions Regulator. HMRC can refuse to register a pension scheme that is a Master Trust and does not hold this authorisation.

Existing schemes becoming Master Trusts

Existing registered pension schemes that change status after 1 October 2018 must tell HMRC within 30 days of this on the APSS578 form and apply for authorisation from The Pensions Regulator.

If existing Master Trusts or existing registered pension schemes that become Master Trusts do not obtain authorisation, they will not be able to operate and will have to wind up.

HMRC will be able to de-register a scheme that is a Master Trust and does not receive or subsequently loses its authorisation from The Pensions Regulator.

www.gov.uk/government/publications/pension-schemes-newsletter-102-august-2018

The Agent Services Account (Lecture P1096 – 17.38 minutes)

An Agent Services Account is the new way for agents to access HMRC digital services. All UK-based tax agents can now set up their Agent Services Account through which HMRC will be providing online services for agents including Making Tax Digital. Any agents who have used the Trust Registration Service will already have their account.

HMRC say that agents can use these accounts to act on behalf of their clients to:

- send Income Tax updates as part of HMRC's Making Tax Digital pilot
- register a trust online
- register an estate online for someone who has died

This list will be updated as more online services become available.

Who should set up the firm's Agent Services Account?

Each firm will have only one Agent Service Account that will be linked to the UTR of the firm (income tax self assessment UTR for sole practitioners, partnership UTR for partnerships and corporation tax UTR for those trading as limited companies). Many firms have several different government gateway IDs for different offices or taxes. Once a firm has set up its Agent Service Account it will need to link all these gateway IDs to the new Agent Service Account although they will continue to be used for existing services.

How to create or sign in to an account

To create an account, agents need to log in to the Government Gateway using any of the credentials that they currently use to access other HMRC online services for agents.

Once an agent services account has been created, HMRC will issue a new agent Government Gateway ID that will be needed to access new HMRC online services. It is important to make a note of these details when they appear on the screen as they cannot easily be retrieved later. These details will be needed to access the ASA and care needs to be taken not to confuse them with existing government gateway IDs. A new Agent Reference Number is allocated during the process and this also needs to be carefully recorded.

Agents should carefully consider the email address to use when setting up the new government gateway ID and ASA. It may be appropriate to use a centralised email address that has some permanence.

Limiting user access

Ideally the firm's access credentials should not be shared with all staff members but instead, the manage user function should be used to create individual credentials and so limit access Without this, a staff member logging in with the main firm credentials could view all client transactions in progress which is clearly not ideal from a security perspective.

Useful updates on developments

HMRC's Talking Points webinars on agent services provide useful updates on the development of the agent service account and the related services. See Help and support for tax agents and advisers for details of forthcoming webinars and recordings of previous webinars (https://www.gov.uk/guidance/help-and-support-for-agents)

https://www.gov.uk/guidance/get-an-hmrc-agent-services-account

Temporary agent authorisation for digital disclosure service

HMRC has made available a new online form, COMP1a, which taxpayers can use to give temporary authorisation for HMRC to deal with an agent in relation to disclosures made via the digital disclosure service.

This authorisation will relate only to disclosures of the year(s) or period(s) specified on the form and will also cover compliance checks opened as a result of the disclosure.

This form will not cancel or amend any permanent authorisation already sent to HMRC, either online or on form 64-8.

www.gov.uk/government/publications/authorise-hmrc-to-temporarily-deal-with-your-tax-adviser-comp1a

Deadlines

1 October 2018

- Corporation tax due for periods ended 31 December 2017 for SMEs not liable to instalments;

5 October 2018

- Advise HMRC of income tax or CGT liabilities for 2017/18;
- New trusts and complex estates with a tax consequence in 2017/18 must using Trust Registration Service.

7 October 2018

- VAT return and electronic payment due for 31 August 2018 quarter;

14 October 2018

- Form CT61 must be submitted and tax paid for quarter ended 30 September 2018;
- Quarterly corporation tax instalment for large companies depending on year end;
- Monthly EC sales list (paper return);

19 October 2018

- Pay PAYE/CIS liabilities for month ended 5 October 2018 if by cheque;
- File monthly CIS return;
- PAYE settlement agreement tax/class 1B liabilities if paying by cheque;
- Quarter ended 5 October 2018 PAYE due if average monthly liability < £1,500;

21 October 2018

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

22 October 2018

- PAYE/National Insurance/student loan/CIS payments if being paid online;
- Electronic payment of PAYE for quarter ended 5 October 2018 if average monthly liability < £1,500;
- Electronic payment of PAYE settlement agreement liabilities;

31 October 2018

- Submission of 2017/18 paper self-assessment tax returns;
- Private companies’ accounts to Companies House for y/e 31 January 2018;
- Public limited companies’ accounts to Companies House for y/e 30 April 2018;
- File corporation tax SA returns for companies with 31 October 2017 period end.

HMRC News

Budget announcement

The Budget had been expected to take place in late November or early December. In an attempt to avoid any Brexit clash, Phillip Hammond has announced that it will take place on 29 October 2018.

Class 2 U Turn **(Lecture B1096 – 15.15 minutes)**

The Government had announced plans to abolish Class 2 National Insurance Contributions in April 2018; this date was then delayed until April 2019. However, on 6 September 2018 the Government announced that the abolition has been scrapped altogether.

For 2018/19 Class 2 NICs are paid by self-employed people with profits of £6,205 or more a year. The abolition would have saved millions of workers about £150 a year (£2.95 per week).

However, the Government realised that their proposed tax simplification would have come at a cost to a significant number of low earning self-employed people. In order to access the state pension, self-employed people earning less than £6,205 often pay Class 2 NICs on a voluntary basis. With its abolition, the only option available to these individuals would have been to pay Class 3 contributions, increasing their effective weekly payments from £2.95 to £14.65.

HMRC Guidance – No Deal Brexit **(Lecture B1099 – 14.28 minutes)**

On 23 August 2018 HMRC published VAT guidance for a “no deal” Brexit scenario. The government expect a Brexit deal to be reached but feel it prudent to have a contingency plan in place just in case!

After 29 March 2019 if there’s no deal

The UK will continue to have a VAT system after it leaves the EU. The VAT rules relating to UK domestic transactions will continue to apply to businesses as they do now.

If the UK leaves the EU on 29 March 2019 without a deal, the government aim to keep VAT procedures as close as possible to what they are now. There will however be unavoidable compliance changes that the government is aiming to mitigate as far as possible.

The guidance note summarises the main VAT issues that will affect UK businesses trading with the EU in goods and services if the UK leaves the EU without an agreement on 29 March 2019.

UK businesses importing goods from the EU

If the UK leaves the EU without an agreement, the government will introduce postponed accounting for import VAT on goods brought into the UK. This means that UK VAT registered businesses importing goods from the EU to the UK will be able to account for import VAT on their VAT return, rather than paying import VAT on or soon after the time that the goods arrive at the UK border.

To ensure equity of treatment, in a no deal scenario, businesses importing goods will be able to account for their import VAT from non-EU countries in the same way.

Customs declarations and the payment of any other duties will still be required at point of entry to the UK. This is the change that concerns most businesses under a no-deal Brexit i.e. Customs procedures and Customs Duty for EU acquisitions. A no-deal Brexit offers no easements here!

VAT on goods entering the UK as parcels sent by overseas businesses

If the UK leaves the EU without an agreement, VAT will be payable on goods entering the UK as parcels sent by overseas businesses.

The guidance note confirms that if the UK leaves the EU without an agreement then Low Value Consignment Relief (LVCR) will no longer apply to any parcels arriving in the UK. This means that all goods entering the UK as parcels sent by overseas businesses will be liable for VAT (unless they are already relieved from VAT under domestic rules, for example zero-rated children's clothing).

For parcels valued up to and including £135, a technology-based solution will allow VAT to be collected from the overseas business selling the goods into the UK. Overseas businesses will charge VAT at the point of purchase and will be expected to register with an HMRC digital service and account for VAT due.

The digital service is an online registration, accounting, and payments service for overseas businesses. On registration, businesses will be provided with a Unique Identifier which will accompany the parcels they send in to the UK. They will then declare the VAT due on those parcels and pay this via their online account. This ensures the process of paying VAT on parcels does not become burdensome for UK consumers and businesses. To give overseas businesses sufficient time to familiarise themselves with their new obligations, the online service will be available for businesses to register in early 2019, prior to 29 March.

On goods worth more than £135 sent as parcels VAT will continue to be collected from UK recipients in line with current procedures for parcels from non-EU countries. VAT will also continue to be collected in line with current procedures for all excise goods sent as parcels and potentially in cases where their supplier is not compliant with HMRC's new parcels policy. HMRC is working with the relevant industry stakeholders and will provide further information in due course.

VAT on vehicles imported into the UK

If the UK leaves the EU without an agreement, businesses should continue to notify HMRC about vehicles brought into the UK from abroad as they do now. The Notification of Vehicle Arrival Procedures (NOVA) system will continue to be used for this purpose.

NOVA is an online service that businesses should continue to use to notify HMRC about vehicles brought into the UK from abroad and ensure that VAT is correctly paid on imported vehicles. The Driver Vehicle Licencing Agency (DVLA) will not register a vehicle brought into the UK for use on UK roads unless it has a valid NOVA notification or it has been registered using the DVLA secure registration scheme.

The rules on the movement of goods to the UK from the EU will change when the UK leaves the EU and as a result, import VAT will be due on vehicles you bring into the UK from EU member states. Certain reliefs will also be available as with current imports of vehicles from non-EU countries. Businesses will need to continue to use NOVA to verify that VAT is correctly paid on imported vehicles.

UK businesses exporting goods to EU consumers

If the UK leaves the EU without an agreement, distance selling arrangements will no longer apply to UK businesses and UK businesses will be able to zero rate sales of goods to EU consumers.

Current EU rules would mean that EU member states will treat goods entering the EU from the UK in the same way as goods entering from other non-EU countries, with associated import VAT and customs duties due when the goods arrive into the EU.

UK businesses exporting goods to EU businesses

If the UK leaves the EU without an agreement, VAT registered UK businesses will continue to be able to zero-rate sales of goods to EU businesses but will not be required to complete EC sales lists.

As UK VAT registered businesses will not be required to complete an EC sales list, there will be changes to how these sales are recorded. Those UK businesses exporting goods to EU businesses will need to retain evidence to prove that goods have left the UK, to support the zero-rating of the supply.

Current EU rules would mean that EU member states will treat goods entering the EU from the UK in the same way as goods entering from other non-EU countries with associated import VAT and customs duties due when the goods arrive into the EU. Individual EU member states may have different rules for import VAT for non-EU countries and import VAT payments may be due at the border when importing goods. UK businesses should check the relevant import VAT rules in the EU Member State concerned.

UK businesses selling their own goods in an EU Member State to customers in that country

If the UK leaves the EU without an agreement, UK businesses will be able to continue to sell goods they have stored in an EU Member State to customers in the EU in line with current Rest of World rules.

Current EU rules would mean that UK businesses will continue to be required to register for VAT in the EU member states where sales are made in order to account for the VAT due in those countries.

Place of supply rules for UK businesses supplying services into the EU

The rules around 'place of supply' will continue to apply in broadly the same way that they do now, areas of potential change are flagged below.

For UK businesses supplying digital services to non-business customers in the EU the 'place of supply' will continue to be where the customer resides. VAT on services will be due in the EU Member State within which their customer is a resident.

For UK businesses supplying insurance and financial services, if the UK leaves the EU without an agreement, input VAT deduction rules for insurance and financial services supplied to the EU may be changed. Input tax is currently deductible when it relates to insurance and financial services sold to non-EU customers so Brexit may prompt a change in UK law in this area. HMRC will update businesses with more information in due course.

UK VAT Mini One Stop Shop (MOSS)

If the UK leaves the EU without an agreement, businesses that sell digital services to consumers in the EU will be able to register for the MOSS non-union scheme.

MOSS is an online service that allows EU businesses that sell digital services to consumers in other EU member states to report and pay VAT via a single return and payment in their home Member State. Non-EU businesses can also use the system by registering in an EU Member State of their choice.

If the UK leaves the EU with no agreement, businesses will no longer be able to use the UK's Mini One Stop Shop (MOSS) portal to report and pay VAT on sales of digital services to consumers in the EU.

Businesses that want to continue to use the MOSS system will need to register for the VAT MOSS non-Union scheme in an EU Member State of their choice. This can only be done after the date the UK leaves the EU. The non-union MOSS scheme requires businesses to register by the 10th day of the month following a sale. You will need to register by 10 April 2019 if you make a sale from the 29 to 31 March 2019, and by 10 May 2019 if you make a sale in April 2019.

Alternatively, a business can register in each EU Member State where sales are made.

EU VAT refund system

If the UK leaves the EU without an agreement, then UK businesses will continue to be able to claim refunds of VAT from EU member states but in future they will need to use the existing paper based processes for non-EU businesses.

UK business will no longer have access to the electronic EU VAT refund system. UK businesses will continue to be able to claim refunds of VAT from EU member states by using the existing processes for non-EU businesses. This process varies across the EU and businesses will need to make themselves aware of the processes in the individual countries where they incur costs and want to claim a refund.

EU VAT Registration Number Validation – accessed via the EU Commission's website

If the UK leaves the EU without an agreement, UK businesses will be able to continue to use the EU VAT number validation service to check the validity of EU business VAT registration numbers.

UK VAT registration numbers will no longer be part of this service. In the event of no agreement HMRC is developing a system so that UK VAT numbers can continue to be validated.

Summarised from HMRC Guidance

Customs Duty post Brexit

Under current EU system, goods moving between the EU and the UK are not subject to customs duty and are only subject to 'lighter touch' customs checks.

Existing customs procedures will continue until 31 December 2020, but the customs rules as we know them will no longer apply. Importers may become subject to additional administrative requirements, including obtaining import registrations and submitting customs declarations every time goods come in and out of the EU. The reliefs currently available may also not apply. This is likely to result in delays to the passage of goods through the border.

Additionally, goods crossing the UK/EU border may become subject to customs duty, in the UK and in the EU but unlike VAT, customs duty is not recoverable. Tim will tell if it will be allowed as a business expense.

The government previously proposed two options for the future customs position and then in July put forward a third option in the White paper 'The future relationship between the United Kingdom and European Union":

1. Maximum facilitation option: Under this option, the UK would trade with the EU as a third party but would look to retain duty-free and administration-free access to the European Single Market, ideally without being subject to decisions by the European Court of Justice.

2. This option would see the UK aligning its approach to customs with the EU so that the UK/EU border would not be necessary with the UK remaining subject to European regulations and decisions of the ECJ.

3. This latest model looks to create a post-Brexit free trade area for goods, subject to a common rule book, common cross-border processes and procedures for VAT and a new 'facilitated customs arrangement' that would remove the need for customs controls at the border. According to the White Paper published on 12 July 2018, the arrangement would involve the UK applying the EU's tariffs for goods intended for the EU, and the UK's own tariffs and trade policy for goods intended for consumption in the UK. Where the destination cannot be 'robustly demonstrated, the higher of the UK and EU tariff would be applied.

Exit from the customs union

But what happens if no deal is reached? The UK and EU would treat cross border supplies in the same way as they currently treat trade with third countries. UK businesses exporting goods into the EU would be subject to the relevant member state's duty regime for third countries. On the other hand, the UK could set its own tariffs for goods imported from the EU and would be free to negotiate preferential trade deals with non-EU states.

It is possible that the UK could become a member of the European Economic Area (EEA) and the European Free Trade Association (EFTA) under an arrangement similar to that of Norway. Norway has partial access to the European Single Market but is not part of the Customs Union. As a result, Norway is granted preferential duty treatment provided certain evidential requirements are met. Such an arrangement would likely require the UK to harmonise its laws to recognise EU requirements.

Exiting the customs union would leave the UK subject to the World Trade Organisation system. Under this system, maximum rates of duties or tariffs are set. Individual countries then choose and set their own rates for all World Trade Organisation, within these parameters.

The Taxation (Cross-border Trade) Bill received Royal Assent on 13 September 2018. It allows for the creation of a new customs system. Regulations will establish a system of customs tariffs, classification of goods (in place of the EU combined nomenclature) and codes. The UK can adopt existing classifications, codes and tariffs but would have to negotiate and agree tariffs with World Trade Organisation members, including the EU and its members. It would take time for each member to agree arrangements that work well for them.

Adapted from Tax Journal (20 July 2018)

State aid control in a Brexit 'no deal' scenario

HMRC has published notice explaining to state aid givers and beneficiaries how the state aid rules will apply in the UK in the event that the UK leaves the EU with no agreement in place.

Before 29 March 2019

As long as the UK is part of the EU, state aid rules have direct effect without the need for domestic implementing legislation. The rules are enforced by the EC. There is no specific UK legislation related to state aid regulation. It is, however, possible to bring a claim in the UK courts to force aid givers who have not notified aid (to the European Commission) to stop giving aid until they have done so.

After 29 March 2019 if there's 'no deal'

The government will create a UK-wide subsidy control framework to ensure the continuing control of anti-competitive subsidies. The EU state aid rules will be transposed into UK domestic legislation under the European Union (Withdrawal) Act. This will apply to all sectors; and will mirror existing block exemptions as allowed under the current rules, including the Agricultural Block Exemption Regulation, and the Fisheries Block Exemption Regulation.

The Competition and Markets Authority, which is a world leading competition authority, will take on the role of enforcement and supervision for the whole of the UK.

The UK government will continue to work with the devolved administrations to ensure the new state aid regime works for the whole of the UK.

If the UK were to leave the EU on 29 March 2019 with no agreement, the Competition and Markets Authority will take over state aid regulation within the UK at that point. The new regime will apply to all businesses with operations in the UK – whether UK, EU or third country based.

From that point:

- UK public authorities will need to notify state aid to any undertaking, through either the block exemption or through a full notification to the Competition and Markets Authority instead of the European Commission;

- Existing approvals of state aid, including block exemption approvals, will remain valid and will be carried over into UK law under the Withdrawal Act;

- Any full notifications not yet approved by the Commission should be submitted to the Competition and Markets Authority.

www.gov.uk/government/publications/state-aid-if-theres-no-brexit-deal

Umbrella company schemes spotlight

HMRC has published Spotlight 45 on the promotion of arrangements by agencies and umbrella companies that claim to save those employed through them tax, but are in effect tax avoidance schemes.

The spotlight describes:

- how the arrangements operate;

- what taxpayers employed through agencies and umbrella companies should check;

- the risks to taxpayers of using the schemes;

- what taxpayers should do if they are involved in these types of arrangements;

How these arrangements work

These arrangements work in different ways, but the companies that use them claim they will reduce tax and paperwork as payments do not count as income as they are a loan, credit, or something similar. These payments are actually no different to normal income, and tax and NIC are payable.

Watch out where:

- company promises the taxpayer can keep 80 to 95% of wages and be tax compliant;
- only a fraction of salary is paid through payroll and subject to PAYE;
- the individual is paid using a loan, credit or investment payment and the company claims this is not subject to income tax or NIC;
- the payment from the umbrella company is routed through various companies.

https://www.gov.uk/guidance/umbrella-companies-offering-to-increase-your-take-home-pay-spotlight-45?utm_source=946ae688-36b3-46c4-9ccb-968b1df3bd34&utm_medium=email&utm_campaign=govuk-notifications&utm_content=immediate

Business Taxation

Self-employed exotic dancer (Lecture B1076 – 15.15 minutes)

Summary – Self employed dancer could deduct the cost of her 'costumes' but her travel expenses were disallowed.

Gemma Daniels was a self-employed exotic dancer who was engaged to perform at Stringfellows nightclub.

The issues in dispute concern the deductibility of travelling expenses incurred by her to and from her home to Stringfellows and the deductibility of certain items including clothing, lingerie and make-up, all of which were claimed as allowable in her tax returns for the years in dispute.

Ms D had an office at home where she carried out various activities related to her work; for instance, contacting customers to encourage them to attend her performances and ordering costumes. She travelled in her car from her home to Stringfellows, leaving home at 6:30 pm and returning at approximately 4:30-5:00 am the following morning. Sometimes she used her car to travel to markets and a fancy dress shop in Camden to buy cosmetics and other items for her performances including jewellery.

Her dresses were long, see-through, skimpy and often decorated with sequins. Her shoes had 6 to 10 inch stiletto heels. They were made so that it was possible to hang upside down from a pole when her performance included pole dancing. Her make-up was heavily applied in a theatrical manner and the lingerie she wore was of a suggestive nature.

Decision

The First Tier Tribunal disallowed her travelling expenses stating that they were not incurred wholly and exclusively for the purposes of her trade. They were partly incurred because of where she chose to live and partly in order for her to get from her home to Stringfellows. The duality of purpose caused her claim to fail.

She wore costumes and dresses that could not be worn outside Stringfellows. The Tribunal concluded that this expenditure was similar to a costume used by an actor for use in a performance. HMRC allowed the deduction of such expenditure. The Tribunal allowed her appeal in relation to the penalties incurred for claiming clothing, etc.

Gemma Daniels v HMRC (TC06640)

Loans written off (Lecture B1076 – 15.15 minutes)

Summary – The First Tier Tribunal made no error of law in concluding that, to the extent Jamie White had made loans to M White Limited, the expense arising when those loans went bad or were estimated to be bad was of a capital nature and so disallowed.

Jamie White ran a skip hire business as a sole trader. On 30 October 2012, he wrote to HMRC seeking to correct his self-assessment tax returns for 2008/09, 2009/10 and 2010/11 pursuant to Schedule 1AB TMA 1970. The corrections related to relief for what were described as irrecoverable debts in connection with loans he had made to a company, M White Limited, that was owned by his father.

HMRC rejected the corrections on the basis that the irrecoverable debts were not allowable for income tax relief because they were capital investments and were not wholly and exclusively laid out for the purposes of trade.

The First Tier Tribunal concluded that they could not be satisfied that at any particular date whether there was any debt owed by M White Limited to Jamie White, nor could they identify at any particular date the amount of any debt outstanding or the minimum amount of any debt outstanding. Even if that had been able to identify such an amount, no relief would have been available to Jamie White on estimating those debts as bad because the underlying loans were capital in nature.

Jamie white appealed to the Upper Tribunal.

Decision

In the circumstances of this appeal the Upper Tribunal held that Jamie White carried on no money-lending trade. When he lent money to M White Limited, he did so as an investment in that company. The loans made were capital in nature, so that the loss he made when they went bad was also capital in nature, as in the English Crown Spelter case.

That conclusion was not altered by the fact that Jamie White's reason for making his investment in M White Limited was to ensure that it could continue to provide him with essential business facilities.

Jamie White v HMRC UT/2017/0087

Corporate interest restriction updated guidance

HMRC has updated this guide in September 2018 with more information for companies and groups who deduct more than £2m a year in interest and other financing costs.

Deducting > £2 million

Where interest and financing costs exceed £2 million, the amount that is deductible is restricted. Such companies must appoint a reporting company within 6 months of the end of the period of account. The reporting company must then submit a Corporate Interest Restriction return.

The company or group must work out their 'interest allowance'. This is the maximum amount of net interest and financing costs that the company or group can deduct in a period of account and is calculated using either the 'fixed ratio' or 'group ratio' method.

Fixed ratio method

Using the fixed ratio method, the interest allowance is the lower of:

- 30% of the company's or group's UK taxable profits before interest, taxes, capital allowances and some other tax reliefs
- the company's or group's worldwide net interest expense

Group ratio method

If a company or group wishes to use this method they must elect to use this method in a return and then the interest allowance is the lower of the:

- ratio of the company's or group's worldwide net interest expense owed to unrelated parties, to the company's or group's overall profit before tax, interest, depreciation and amortisation multiplied by the company's or group's taxable UK profits before interest and capital allowances
- company's or group's worldwide net interest expense owed to unrelated parties

Reporting company

The reporting company must be:

- liable to UK Corporation Tax
- non-dormant
- authorised by at least 50% of the group's non-dormant companies (which are liable for UK Corporation Tax) to be appointed as the reporting company

Having appointed a reporting company, they must submit a Corporate Interest Restriction return for every period of account, including when there's no interest restriction.

Unrestricted interest

Where the interest and financing costs do not exceed £2 million, companies can choose to appoint a reporting company, which must then submit an abbreviated return. This enables them to carry forward unused interest allowance for up to 5 years to reduce a future interest restriction, by replacing that abbreviated return with a full return for that period of account.

Failing to submit a return

If a company or group does not submit a Corporate Interest Restriction return when it should, it might have to pay a fixed penalty of:

- £500 if the return is up to 3 months late
- £1,000 if the return is more than 3 months late

Submitting an inaccurate Corporate Interest Restriction return, could result in the company or group having to pay a penalty of up to 100% of the extra tax (or lower tax relief) owed in the corrected return.

www.gov.uk/guidance/corporate-interest-restriction-on-deductions-for-groups

Carried-forward losses – ICAEW request updated guidance

The ICAEW's Tax Faculty has written to HMRC requesting updated guidance. They state that they are concerned that:

> "the requirement to state the deductions allowance in a year where losses are to be used, regardless of the level of profits in the company, imposes a disproportionate burden on the majority of companies which we understand were clearly not the intended target of the new legislation. Failure to state the allowance on the corporation tax return will result in the company only being able to carry forward losses against 50% of its future profits. The Tax Information and Impact Note states that "99% of companies" will be unaffected by the restriction. This is clearly not the case as there is an administrative requirement which all companies must comply with regardless of profit levels."

They make the following recommendations:

- The requirement to state the allowance (and split between different types of loss) needs to be much more prominent in the guidance.

- HMRC needs to amend the existing CT600 return to include space to declare the deductions allowances. This needs to be done as a matter of urgency given the legislation has now been in force for 17 months. In the interim period it should be made clear in the guidance that a statement on an accompanying computation will suffice. The guidance accompanying the CT600 should be updated to explain exactly what is acceptable to HMRC.

- The Company Losses Toolkit needs to be updated to flag the requirement to those preparing the CT600.

- Until the above recommendations are implemented, they request that HMRC publishes an assurance that having entered the correct amount in box 285, it would be accepted that a company's self-assessment has met the requirement to specify the allowance. In the meantime, we will consider further the case for amending the primary legislation to address these concerns.

Jersey, Guernsey and Isle of Man DTAs

The government has published three draft orders that will give effect to the new comprehensive double taxation agreements (DTAs) signed in July with Jersey, Guernsey and the Isle of Man. These new DTAs update the current arrangements in line with OECD/G20 BEPS minimum standards, besides introducing other changes. The new DTAs have not yet entered into force.

The draft orders are the:

- Double Taxation Relief and International Tax Enforcement (Isle of Man) Order 2018;
- Double Taxation Relief and International Tax Enforcement (Guernsey) Order 2018; and
- Double Taxation Relief and International Tax Enforcement (Jersey) Order 2018.

Each of the draft instruments include the following changes that have no equivalent in the current arrangements (from 1955 and 1952 respectively):

- article 1 (persons covered) includes provisions relating to transparent entities and the taxation of a territory's own residents, as recommended by the BEPS project;
- article 10 (dividends) provides for dividends paid by a company resident in one territory to a beneficial owner resident in the other territory to be exempt from tax in the paying territory, with dividends paid by REIT residents subject to a withholding tax of 15%;
- article 11 (interest) exempts from withholding tax interest arising in one territory and beneficially owned by a resident of the other territory, but only where the beneficial owner of the interest falls under one of the categories specified;
- article 12 (royalties) exempts from withholding tax royalties arising in one territory and beneficially owned by a resident of the other territory, but only where the beneficial owner of the royalties falls under one of the categories specified;
- article 15 (directors' fees) mirrors the current OECD model article and provides that directors' fees etc. can be taxed in the territory where the company paying them is a resident;
- article 20 (other income) follows the approach of the current OECD model article and provides that income not dealt with elsewhere in the agreement will be taxable only in the territory in which the beneficial owner is resident;
- article 21 (miscellaneous rules applicable to certain offshore activities) contains rules primarily in respect of the exploration for, or exploitation of, oil and gas resources;
- article 23 (entitlement to benefits) introduces the 'principal purpose test' (agreed under BEPS Action 6) denying treaty benefits to those seeking to secure a result contrary to the object and purpose of the arrangements; and
- article 24 (non-discrimination) seeks to prevent one territory imposing discriminatory taxes (or requirements) on the entities, permanent establishments and enterprises of the other.

CbC reporting (BEPS Action 13) implementation guidance

On 13 September 2018, the OECD releases further interpretative guidance to tax administrations and MNE Groups on Country-by-Country reporting (BEPS Action 13)

The new guidance includes questions and answers on the: treatment of dividends received and the number of employees to be reported in cases where an MNE uses proportional consolidation in preparing its consolidated financial statements, which apply prospectively. The updated guidance also clarifies that shortened amounts should not be used in completing Table 1 of a country-by-country report and contains a table that summarises existing interpretative guidance on the approach to be applied in cases of mergers, demergers and acquisitions.

The complete set of guidance concerning the interpretation of BEPS Action 13 issued so far is presented in the document released today which will continue to be updated with any further guidance that may be agreed.

On the same date a set of newly established bilateral exchange relationships under the Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports (CbC MCAA) were published with respect to Bermuda, Curaçao, Hong Kong (China) and Liechtenstein.

http://www.oecd.org/ctp/guidance-on-the-implementation-of-country-by-country-reporting-beps-action-13.pdf

Non-taxation of McDonald's profits

Summary - The European Commission has found that the non-taxation of certain McDonald's profits in Luxembourg did not lead to illegal state aid, as it is in line with national tax laws and the Luxembourg/United States double taxation treaty.

McDonald's Europe Franchising is a subsidiary of McDonald's Corporation, based in the United States. The company is tax resident in Luxembourg and has two branches, one in the United States and the other in Switzerland. In 2009, McDonald's Europe Franchising acquired a number of McDonald's franchise rights from McDonald's Corporation in the United States, which it subsequently allocated internally to the US branch of the company. As a result, McDonald's Europe Franchising receives royalties from franchisees operating McDonald's fast food outlets in Europe, Ukraine and Russia for the right to use the McDonald's brand. McDonald's Europe Franchising also set up a Swiss branch responsible for the licensing of the franchise rights to franchisors and through which royalty payments flowed from Luxembourg to the US branch of the company.

Luxembourg authorities granted McDonald’s European Franchising a first tax ruling in March 2009 exempting it from paying corporation tax in Luxembourg due to the profits being subject to tax in the United States. Following this ruling, the Luxembourg authorities and McDonald's engaged in discussions concerning the taxable presence of McDonald's Europe Franchising in the US. McDonald's claimed that although the US branch was not a "permanent establishment" according to US tax law, it was a "permanent establishment" according to Luxembourg tax law. As a result, the royalty income should be exempt from tax under Luxembourg corporate tax law.

The Luxembourg authorities ultimately agreed with this interpretation and, in September 2009, issued a second tax ruling according to which McDonald's Europe Franchising was no longer required to prove that the royalty income was subject to taxation in the United States. So under the tax structure in Luxembourg and between Luxembourg and the US, McDonald's avoided paying tax on some profits in both jurisdictions but was this right?

Based on doubts that Luxembourg might have misapplied its double taxation treaty with the US, the EC started an investigation in December 2015. Nearly three years later, the EC has concluded that it could not be established that the interpretation given by the second tax ruling to the Luxembourg/US double taxation treaty was incorrect, even though it resulted in the double non-taxation of the royalties attributed to the US branch.

Therefore, the Luxembourg authorities did not misapply the double taxation treaty and the tax advantage conferred to McDonald's Europe Franchising cannot be considered state aid. McDonald's Europe Franchising's US branch did not fulfil the relevant provisions under the US tax code to be considered a permanent establishment. The Commission also found that the Luxembourg authorities could exempt the US branch of McDonald's Europe Franchising from corporate taxation without violating the Double Taxation Treaty because the US branch could be considered a permanent establishment according to Luxembourg tax law. Under the relevant provision in the Luxembourg tax code, the business carried on by the US branch of McDonald's Europe Franchising fulfilled all the conditions of a permanent establishment under Luxembourg tax law.

So the EC concluded that the Luxembourg authorities did not misapply the Luxembourg/US Double Taxation Treaty. Double non-taxation of McDonald’s profits was the result of a mismatch in the US/Luxembourg double taxation treaty over the definition of a permanent establishment, rather than any selective treatment by Luxembourg.

Clearly this does not seem right and it seem as if the Luxembourg authorities agree as on 19 June 2018, the Luxembourg government presented draft legislation to amend the tax code to bring the relevant provision into line with the OECD's base erosion and profit shifting (BEPS) and to avoid similar cases of double non-taxation in the future.

Under their proposals:

- The conditions to determine the existence of a permanent establishment under Luxembourg law would be strengthened; and

- Under certain circumstances, Luxembourg would be able to require companies that claim to have a taxable presence abroad to submit confirmation that they are indeed subject to taxation in the other country.

europa.eu/rapid/press-release_IP-18-5831_en.htm

Basic loan relationship principles **(Lecture B1078 – 18.56 minutes)**

Scope of loan relationship legislation

The meaning of a 'loan relationship' (LR) is widely defined in s302, CTA 2009 and covers:

- money debts for the lending of money (e.g. financing loans); or
- money debts evidenced by an instrument issued for the purpose of evidencing the lender's security (e.g. loan notes issued to a corporate vendor on a takeover).

Related LR transactions involving the disposal or acquisition of rights or liabilities under a LR are also included.

Broadly, 'money debts' are those which can be settled by:

- the payment of money (including foreign currency);
- the issue/transfer of shares; or
- by the transfer of rights to the settlement of another money debt (s303, CTA 2009).

Examples of items typically covered by the LR rules are:

- bank borrowing and deposits;
- directors loan accounts;
- shareholder and loans; and
- third party borrowing and lending.

Deferred consideration for the sale of a capital asset (such as shares) will not fall within the LR rules, unless a loan note is issued evidencing the debt (although the deferred consideration will normally fall within the relevant non-lending LR rules (see below)).

Shares and convertible debt held on capital account (where there is a reasonable likelihood at the outset that the right to convert into ordinary shares will be exercised) remains a chargeable asset within the capital gains regime (although interest received thereon will generally be taxed on an accruals basis within the LR regime).

Extension to non-monetary debts

Where there is no lending of money, there is unlikely to be a LR – for example, where consideration for the sale of services of goods or services is left outstanding, or deferred consideration for the sale of a capital asset, such as shares (except where a loan note is issued).

However, non-monetary debts are treated as non-lending relationships and are covered by the LR rules (s478 CTA 2009) for certain purposes only, which are:

- Interest;
- Foreign currency exchange (Forex) differences (see s483 CTA 2009);
- Impairment losses;
- Release of debts;
- Discounts.

Notably, this means that the LR impairment loss and the debt release rules will now operate for simple trade debts with connected companies.

Deemed QCB rule

Any debt treated as a LR is deemed to be a Qualifying Corporate Bond (QCB) for a corporate holder. This effectively takes profits from corporate LRs out of the gains regime (since QCBs are exempt assets for capital gains purposes)

Accounts-based regime

Under the LR regime, the tax treatment of 'debt-related' expenses, losses and profits/credits is broadly based on the amounts included in the company's GAAP compliant accounts , subject to various statutory provisions which require a different tax treatment for certain items. LR debits and credits are relieved and taxed as income items (so the traditional 'capital' v revenue' distinction is ignored).

Companies must include in their corporation tax computations all debits and credits relating to its LRs, including forex differences (s307 CTA 2009)

The debits and credits brought into account must include all amounts on which the company's profit for the relevant corporation tax accounting period (CTAP) is based. S308 CTA 2009 provides that the relevant amounts are picked-up from items passing through a company's:

- income statement for the period;
- other comprehensive income (OCI);
- share premium account.

This requirement is subject to a number of special statutory overrides.

Trade and non-trade LR debits and credits

All LR and LR-related forex debits and credits must be analysed between trade and non-trade items.

Debits and credits (and forex arising on trading related loans are included within the company's tax-adjusted trading results. Interest and other expenses/losses charged on loans borrowed for a trading purpose are deductible as a trading expense.

Interest credited on trading account is included as a trading receipt. This is only likely to apply to banks and financial traders. Non-financial trading companies do not normally make loans for the purposes of their trade.

Interest incurred and receivable, together with other LR debits and credits relating to non-trade borrowing and lending must be pooled (together with any non-trade LR forex) to produce either a non-trading credit or non-trading deficit for the period.

Relief for non-trading debits

A non-trading loan relationship (LR) deficit can be relieved in the following ways:

- surrender by way of group relief (without having to offset it against the surrendering company's profits first) (s457 (2)(a), CTA 2009);

- by set-off against the total profits of the same accounting period (which is referred to in the statute as the deficit period); and

- by carry-back and set-off against non-trading loan relationship profits arising in the previous 12 months.

Furthermore, post-31 March 2017 non-trading deficits can be offset against its future total profits (including trading profits, rental income, investment income, capital gains and so on) and the total profits of fellow group companies. This offset is subject to the £5 million 'annual allowance' restriction rules. In contrast, pre-1 April 2017 non-trading deficits could only be carried forward and offset against the company's future non-trading profits (i.e. all profits except trading profits). The same offset rules apply where these pre-1 April 2017 LR deficits are carried forward against post-31 March 2017 non-trading profits (except that they will be subject to the £5 million annual allowance restriction.

Companies can use their post-31 March 2007 non-trade LR deficits in priority to any pre-1 April 2007 deficits.

Contributed by Peter Rayney

VAT

Supplies of digital services (Lecture B1096 – 15.15 minutes)

In 2015 the VAT rules changed so that businesses making sales of digital services across the EU had to account for VAT in each EU member state that their customers are based in. There is no VAT threshold for these types of sales and so VAT is due on all sales made to other EU member states.

The VAT MOSS scheme was introduced to simplify the administration of the VAT system for businesses making these types of sales overseas. This is an online service which allows businesses to account for all VAT due on these types of supplies through a single return in their home country, rather than registering in every member state where they have customers.

In an attempt to ease the administrative burden on businesses making sales of digital services, and to allow a group of businesses currently excluded from the MOSS scheme to access it, two changes to the operation of the VAT mini one-stop-shop for supplies of digital services will take effect from 1 January 2019.

1. Introduction of a €10,000 threshold for total supplies to the EU in a year of sales of digital services. This change means businesses will only be subject to the VAT rules of their home country if their relevant sales across the EU in a year (and the preceding year) falls below this threshold. If the businesses total taxable turnover is below the UK VAT registration threshold they will be able to de-register from VAT. Businesses can continue to apply the current rules if they so choose.

2. Allow non-EU businesses, which are registered for VAT for other purposes, to use the MOSS scheme to account for VAT on sales of digital services to EU member states. This group are currently excluded from using MOSS - a business facilitation system.

www.gov.uk/government/publications/vat-changes-to-the-supply-of-digital-services-2019

R&C Brief 6/2018 (Lecture B1096 – 15.15 minutes)

From 1 November 2018, HMRC will require all property management companies to account for VAT at the standard rate on fees they charge landlords for providing common services to the occupants of residential property. Management companies cannot use ESC 3.18, under which landlords who provide such services directly may treat mandatory service charges paid by the occupants as exempt from VAT.

More detailed guidance is given in VAT Information Sheet 7/2018.

www.gov.uk/government/publications/revenue-and-customs-brief-6-2018-vat-exemption-for-all-domestic-service-charges

VAT information sheet 7/2018 (Lecture B1096 – 15.15 minutes)

This information sheet sets out HMRC's view of the correct application of ESC 3.18, which allows landlords to exempt mandatory service charges paid by both freehold and leasehold occupants of residential property.

The concession does not apply to property management companies providing services on landlords' behalf and HMRC identifies common examples of where companies have incorrectly applied or relied on ESC 3.18.

ESC 3.18 - VAT: exemption for all domestic service charges

Customs and Excise Brief 03/94 introduced this concession in April 1994. Its purpose is to enable the same VAT treatment on mandatory service charges to a freehold occupant as to a leaseholder or tenant living on the same common estate. Such charges are:

- exempt from VAT when made to leaseholders or tenants as they directly link to an exempt supply of an interest in land from the landlord
- standard-rated for VAT when made to freeholders as they constitute a separate supply not linked to a supply of an interest in land

As a landlord of a common area of a shared residential estate, mandatory charges to freeholders of property on that estate can be treated as exempt from VAT. But doing so, may restrict their ability to recover the tax incurred on their costs and overheads.

Services covered by the concession

The services covered are the:

- upkeep of the common areas of the estate, dwellings or blocks of flats where the occupants live and where these charges are mandatory for all the occupants
- provision of a warden, superintendent, caretaker or those performing a similar function connected with the day-to-day running of that estate, dwelling or blocks of flats, for those occupants
- general maintenance of the exterior of a block of flats or individual dwelling - where the residents cannot refuse this

Mrs Janine Ingram (2015) UKUT 0495(LC)

The decision in this case confirmed that if a landlord is contractually obliged to provide services to the occupant of a property, and uses a property management company or similar, to provide these services, the property management company cannot use the concession. This is because the management company is providing a standard-rated supply of services to the landlord, not the occupant, even though they are collecting payment on behalf of the landlord directly from the occupant.

Common errors

HMRC has identified the following common scenarios where people have failed to apply ESC 3.18 correctly:

1. Property management companies treating their supply as being to the occupant, rather than the landlord;

2. Not recharging costs borne on behalf of the landlord back to the landlord;

3. Supply of staff - the recharge of staff or personnel costs by a management company is a taxable supply to the landlord. In some cases, management companies have wrongly relied on ESC 3.18 to recharge staff or personnel costs direct to the occupant as an exempt supply.

www.gov.uk/guidance/applying-the-correct-vat-liability-on-residential-domestic-service-charges-vat-information-sheet-0718

Betting and gambling machines – Two recent cases

Legislative framework

In summary, the UK VAT legislation provided that gambling by means of fixed odds betting terminals (FOBTs) was:

- exempt under item 1 of Group 4 of Schedule 9 to VATA 1994 until 5 December 2005;

- standard rated from 6 December 2005 to 31 January 2013 when legislation was amended;

- exempt from 1 February 2013 when legislation was amended again and supplies of gambling by means of FOBTs became subject to Machine Games Duty .

Two recent cases considered whether treatment of other betting and gambling facilities when compared to FOBTs, have created issues that are contrary to the EU law principle of fiscal neutrality.

The Rank Group Plc v HMRC (TC06607)

During the Claim Period (1 October 2002 to 5 December 2005), supplies of gambling made through section 16/21 machines and fixed odds betting terminals ('FOBTs') were treated as exempt under item 1 of Group 4 of Schedule 9 to VATA 94. Section 31/34 machines were regarded as 'gaming machines' and supplies of such machines for gambling were excluded from exemption by Notes (1) and (3) to Group 4 and were thus chargeable to VAT at the standard rate.

Rank accounted for VAT on supplies of gambling by means of section 31/34 machines during the Claim Period. With effect from 6 December 2005, the definition of 'gaming machine' was extended to include FOBTs so that supplies of gambling on FOBTs became subject to VAT at the standard rate.

On 21 December 2005, Rank made a claim for repayment of the VAT that it had charged and accounted for in relation to the section 31/34 machines on the ground that supplies of gambling made by those machines and by FOBTs were similar and treating similar supplies differently for VAT purposes during the Claim Period was contrary to the EU law principle of fiscal neutrality.

The First Tier Tribunal needed to determine whether, during the Claim Period, FOBTs and the section 31/34 machines and/or section 16/21 machines were similar.

Decision

The Tribunal highlighted that they needed to consider whether the games were similar from the point of view of a typical or average consumer. To do so, they considered how the following would influence typical consumer's decision to use one machine rather than another:

1. minimum and maximum stakes;
2. minimum and maximum prizes;
3. chances of winning;
4. events or games available; and
5. possibility of interaction between the player and the machine, including the ability of the player to influence the outcome of the game by their play.

In concluding, the Tribunal considered that the evidence showed that the typical or average consumer viewed FOBTs, section 16/21 machines and section 31/34 machines as similar and interchangeable because they all met the same need from the point of view of that customer which was to gamble on a machine by playing a game of chance for money. This was consistent with the statement of the CJEU in Rank CJEU that "the attraction of games of chance lies chiefly in the possibility of winning". That is also consistent with the view of the original tribunal in 2009 that stated at paragraph 38:

> "On the evidence before us to the generality of players they were all just gambling machines."

The Tribunal found that treating FOBTs, section 16/21 machines and section 31/34 machines differently for VAT purposes during the Claim Period breached the principle of fiscal neutrality.

Rank's appeal is allowed.

Done Brothers (Cash Betting) Ltd, Tote (Successor) Company Ltd, Tote Bookmakers Ltd v HMRC (TC06608)

During the Claim Period (6 December 2005 to 31 January 2013):

- the provision of facilities for placing bets or playing games of chance was an exempt supply under item 1 of Group 4 of Schedule 9 to VATA 1994;
- supplies made through FOBTs were subject to VAT at the standard rate.

The Betfred Group companies considered that the games supplied through FOBTs, which were taxable, were similar to the comparator games played in casinos and online which were exempt and that the different treatment of the supplies for VAT purposes breached the principle of fiscal neutrality. Based on this view, they made claims for repayments of overpaid VAT. HMRC rejected the claims on the ground that the supplies were not sufficiently similar to engage the principle of fiscal neutrality.

Decision

The only issue for determination was whether supplies of the FOBT games during the Claim Period were similar to one or more of the comparator games for the purposes of the principle of fiscal neutrality so that the different VAT treatment of those supplies breached that principle.

Once again the Tribunal considered whether the games were similar from the point of view of a typical or average consumer. Did the differences between the FOBT and comparator games have a significant influence on the decision of the average consumer to play one or the other? They considered the same areas as in the Rank case above and reached the same conclusion with the exception of certain' other games' where insufficient evidence was provided.

Place of supply for cars

Summary – Cars bought were treated as having been acquired and supplied in the UK so making them subject to UK VAT.

IC Wholesale Ltd bought cars from businesses in Cyprus and Malta. It brought them to the UK and sold them to customers in Ireland.

IC Wholesale Ltd claimed that the invoices to customers were issued before the vehicles had left Cyprus and Malta, so the supplies should be zero rated because the place of supply was outside the UK.

Decision

Referring to the CJEU decision in Euro Tyre Holding BV v Staatsecretaris van Financiën (Case C-430/09) [2011] STC 798, the Upper Tribunal noted that the taxpayer used its UK VAT number to acquire the vehicles from the Cypriot and Maltese suppliers so they could zero rate their supplies.

However, the company did not tell them that the ownership of the vehicles would be transferred to the Irish customers before they left Cyprus and Malta. Consequently, the Cypriot and Maltese dealers were treated as making the intracommunity dispatch and the IC Wholesale Ltd was treated as having acquired and supplied the cars in the UK. Its supplies were therefore subject to UK VAT. There was no taxable acquisition by IC Wholesale Ltd in Cyprus or Malta.

IC Wholesale Ltd 's appeal was dismissed.

IC Wholesale Ltd v HMRC [2018] UKUT 0203 (TCC)
Adapted from Taxation magazine (16th August 2018)

Fish and chip takings **(Lecture B1096 – 15.15 minutes)**

Kyriakos Karoulla ran a VAT registered fish and chip shop during the relevant period (1 December 2011 to 31 October 2014).

The VAT returns which had been submitted by Kyriakos Karoulla included sales figures based solely on the close of day "Z readings" generated by the till. As part of a VAT inspection, HMRC analysed the information they had obtained relating to purchases in the shop paid for by credit or debit card and concluded that Card Purchases made after 8pm each day were not being entered on the till and concluded that takings had been suppressed.

In March 2015 HMRC issued a VAT assessment for £28,323 and in April 35 2015 raised an associated penalty of £26,913.18. HMRC upheld the assessment and penalty on statutory review.

Kyriakos Karoulla appealed against the First Tier Tribunal's decision to uphold a best judgment assessment by HMRC for under-declared VAT from takings from its fish and chip shop. The Upper Tribunal had twice refused his application for permission to appeal the decision but he was finally allowed to do so on credit card transactions reflected in HMRC's best judgment assessment.

The taxpayer wished to offer new evidence consisting of originals of till rolls and records relating to card purchases. These had been removed by HMRC and only returned shortly before the hearing of the taxpayer's application for permission to appeal.

Decision

The Upper Tribunal noted that Kyriakos Karoulla had asked HMRC to return these items before the First-tier Tribunal hearing but HMRC had either ignored or refused such requests on the basis that it was under no obligation to assist the taxpayer with its case.

The judge said:

> "That was a totally inappropriate response to a proper request from the taxpayer for the return of documents which he himself had provided to HMRC during the course of its enquiries and which the taxpayer plainly required in order to answer HMRC's case.' He noted that the First-tier Tribunal's observation that the failure to produce the till rolls was 'unfortunate' was a 'gross understatement".

The Upper Tribunal said that Kyriakos Karoulla accepted there had been suppression of card purchases but new evidence showed that this was inconsistent, and payments were not omitted from the till every day after 8pm.

The Tribunal set aside the original decision and remitted the appeal to be heard by a new panel of the First Tier Tribunal but said that this would not be necessary if both parties could agree a settlement as to quantum.

Kyriakos Karoulla's appeal was allowed.

Kyriakos Karoulla T/A Brockley's Rock v HMRC [2018] UKUT 0255 (TCC)

Travel and subsistence salary sacrifice

Summary – Salary sacrificed in return for tax free travel and subsistence payments was not a taxable supply for VAT.

A recruitment consultant offered temporary workers a mobile advantage plan whereby they agreed to a reduction in their weekly salary in return for a payment for their travel and subsistence expenditure. The company would save on National Insurance and the employee on tax because the travel and subsistence expenses were tax-free.

HMRC issued an assessment for £529,754 in December 2013 covering periods back to July 2009. It issued another assessment for £186,344 one year later. HMRC argued that the salary deductions related to a taxable supply of operating the mobile advantage plan scheme to the employees. Pertemps Ltd said there was no supply of services from it to the employees but rather employees accepted lower wages in return for the payment of tax-free expenses for travel and subsistence.

Decision

The First Tier Tribunal agreed with Pertemps Ltd that the salary deduction did not relate to a supply of goods or services to its employees.

in addition, the plan did not relate to an 'economic activity' because it did not provide an income stream to Pertemps Ltd. Instead, it reduced the cost of employing its workers, thereby increasing the profits from its business of providing workers to clients.

Pertemps Ltd's appeal was allowed.

Pertemps Ltd v HMRC (TC06583)

Adapted from Taxation (23 August 2018)

Services under a dental plan

Summary - the CJEU found that services provided under a dental plan were not exempt under the Principal VAT Directive art 131(1)(d)).

DPAS provided practice branded dental plans, which were arrangements between a dentist and their patient, under which the dentist agreed to provide a certain level of dental care for a monthly fee. The plan included insurance and payment administration services provided by DPAS.

The issue was whether DPAS provided services to patients; and, if so, whether these services were exempt as 'transactions concerning payments and transfers' (art 131(1)(d)).

Decision

The CJEU observed that the transactions exempted under art 131(1)(d) are defined according to the nature of the services provided (which should relate to financial transactions) and not in terms of the person supplying or receiving the service.

The court referred to its own decision in Bookit (Case C-607/14) as authority for the proposition that 'a transfer is a transaction consisting of the execution of an order for the transfer of a sum of money from one bank account to another.' A transfer of funds therefore involves a change in the legal and financial situation.

The court added that exempt services should be distinguished from the supply of 'mere physical, technical or administrative services.' The court observed that, under its plan, DPAS requested a direct debit mandate from the patient's financial institution and subsequently requested the financial institution with which it held its account to transfer that sum from that account to the respective bank accounts of the dentist and the patient's insurer. DPAS only retained a 'management payments'. The services supplied by DPAS did not therefore 'effect the legal and financial changes which characterise the transfer of a sum of money.

The court accepted that DPAS' services were essential to making the payments by patients to dentists and insurers, however it considered that 'the mere fact that a service is essential for completing an exempt transaction does not warrant the conclusion that that service is to be exempted.'

HMRC v DPAS (Case C-5/17) (25 July)
Adapted from case summary in Tax Journal (31 August 2018)

SME VAT scheme

In January 2018, the European Commission published a proposal for SMEs with a turnover below €2m to qualify for simplified VAT registration and record keeping, together with a new exemption for companies with an overall EU-wide turnover below €100,000. The EU Parliament’s economic and monetary affairs (ECON) committee report, setting out amendments to the original proposal, has been published in the EU official journal.

The committee’s amendments include:

- setting both an upper limit (at EU level) and a lower limit (by member states) for the VAT exemption threshold;
- dropping the proposed requirement for SMEs to submit annual VAT returns;
- preventing member states from requiring exempt SMEs to submit VAT returns;
- creating an online one-stop-shop allowing SMEs to register for the exemption across member states; and
- implementing the scheme from 1 January 2020 (rather than 1 July 2022 in the original proposal).

www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A8-2018-0260&format=XML&language=EN

Failure to submit annual VAT return on time (Lecture B1100 – 12.25 minutes)

Background

This session considers the recent First-tier Tribunal case involving Curtises Ltd (T6460), a business that used the annual accounting scheme i.e. it submitted one annual VAT return to 31 December each year, a return that had to be legally submitted by 28 February (scheme users get an extra month to submit the return). Reference: VAT Notice 732, para 1.4. It was the quirks of the scheme that led to the business being issued with a penalty of £26,948 by HMRC.

History of events

To understand the background to this case, a timeline of events is useful.

The business was required to submit its December 2016 return by 28 February 2017 but it failed to submit the return by the due date, so HMRC estimated the liability and issued a central assessment for £35,578 on 17 March 2017. The company had already paid £32,499 on account during the year (payments on account are a condition of the scheme) but made an additional payment of £46,131 on 5 April as well.

HMRC wrote to the taxpayer on 18 May asking for the return to be submitted, which eventually happened on 7 June. But the amount owed on the return was actually £215,233.43. HMRC had greatly underestimated the liability for the period when it raised its estimated assessment for only £35,578.

The law

If a business accepts a central assessment that is too low, then it is subject to a potential penalty (para 2, Sch 24, FA2007). The business owner has 30 days from the receipt of the assessment to "take reasonable steps" to notify HMRC that there is a problem. The penalty is based on the 'potential lost revenue', which is the difference between the assessed amount and the true liability for the period. In this situation, HMRC rightly treated the situation as a 'prompted disclosure' and issued a penalty for 15% of the potential lost revenue, which is the minimum penalty that can be applied:

£215,233 - £35,578 = £179,655 x 15% = £26,948.25.

Taxpayer argument

HMRC applied the law correctly, and the reason for the law is to act as a disincentive to a company that accepts a low assessment when it has a higher liability for a period. So it was always going to be difficult for the director to overturn the penalty. He highlighted the company's general compliance to tax matters and the fact that the outstanding VAT liability was fully paid when the return was submitted. He agreed that the company was "struggling to cope with the growth in its business."

The judge agreed that "a penalty of this magnitude for what is ultimately a fairly minor mistake does appear a little harsh" but the law had to be applied and the appeal was dismissed.

Annual accounting pitfall

The annual accounting scheme has never been widely popular with taxpayers, even though it can be used by any business that expects its annual taxable sales in the next 12 months to be less than £1.35m. excluding VAT. Accountants and clients often like the discipline of a client completing quarterly (or monthly) returns to ensure that record keeping is up to date, and it also means that cash flow is easier because the business is paying its actual dues on a regular basis.

I can see how the Curtises problem arose: the company's annual turnover increased from £700k in 2015 to £2.75m in 2016, so the final VAT liability on its 2016 annual VAT return was always likely to be higher than both the directors and HMRC were expecting. This is a major potential pitfall of the scheme, namely that the payments on account during the course of the year will often be too low for a growing business, leaving a big balancing payment when the return is submitted. The message is simple: Annual accounting scheme – beware!

Contributed by Neil Warren

Preparing for MTD for VAT? (Lecture B1096 – 15.15 minutes)

Under Making Tax Digital (MTD) for VAT businesses must:

- keep their records digitally, and
- file their VAT return through MTD compatible software, and
- be able to receive information from HMRC

Businesses will not be asked to keep digital records, or to update HMRC quarterly, for other taxes until at least 2020. When preparing for MTD for VAT do factor in that other taxes will undoubtedly follow.

VAT registered businesses

VAT Notice 700/22 (July 2018) provides useful guidance but this is likely to be updated by the end of 2018!

MTD will apply to all VAT registered business that have taxable income over £85,000 on 1 April 2019 or which exceed the threshold on any rolling 12-month basis thereafter.

If you breach the £85,000 at 31 March 2019 you must be MTD compliant for the next return period commencing on or after 1 April 2019. For quarterly returns this would be the 30 June, 31 July or 31 August return depending on your VAT stagger.

A client compulsory registering after 1 April 2019 must be MTD compliant for their first VAT return.

If you are VAT registered at 31 March 2019 but below the £85,000 limit you do not need to comply with MTD unless you want to!

If you are voluntarily registered but below £85,000 at 1 April 2019 and subsequently exceed the £85,000 limit in any rolling 12 month period, you must be MTD compliant for the next VAT return commencing after the breach.

Example 1

Consider a voluntarily VAT registered client with a calendar quarter VAT stagger. They breach the £85,000 limit on 30 November 2019.

The VAT return to 31 March 2020 must be MTD compliant

Once a business is required to keep digital records, this requirement will remain in place whilst you are VAT registered. The MTD requirement only stops when you deregister.

If you voluntarily comply with MTD (i.e. taxable income < £85,000) you can voluntarily come out of MTD if you wish.

Going forward new registrations will have extra considerations:

….getting registered for VAT, and

……complying with MTD if compulsorily registering

What income do you count?

Only count the zero rated, 5% and SR income for the £85,000 MTD limit.

Do not count exempt or outside the scope income such as residential rental income (exempt) or B2B international services (outside the scope).

Example 2

A UK VAT registered consultant has turnover of £200,000 (£70,000 UK plus £130,000 overseas).

The consultant does not have to be MTD compliant as taxable income is only £70,000. The £130,000 is outside the scope (B2B).

MTD for landlords

Only taxable sales are included in the threshold so for property landlords that would be opted commercial rent and furnished holiday letting income. Residential rent is exempt so this income is excluded.

Landlords that have opted to tax their commercial property would have taxable income and this would count towards the £85,000 MTD limit.

A taxpayer must include all their business income in this test.

So if a VAT registered business had taxable trading income of £70,000 and opted commercial rent of £20,000 their taxable income is £90,000 and they must be MTD compliant.

If the rental income was exempt residential rent then they would be outside of the MTD regime as their taxable income is only £70,000.

Exemptions

For those with taxable turnover above VAT registration threshold the current exemptions from digital filing will be extended to MTD where the Commissioners are satisfied:

- Your business is run entirely by practicing members of a religious society whose beliefs are incompatible with the use of electronic communications, or
- It is not reasonably practicable for you to use digital tools to keep your business records or submit your returns, for reasons of age, disability, remoteness of location;
- you are subject to an insolvency procedure.

You will have to contact HMRC to request exemption but they are not yet in a position to give you an answer!

There is a right of appeal where HMRC refuse exemption.