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Personal tax

CJRS claims denied (Lecture P1451 – 16.42 minutes)

Summary – When claiming payments under the Coronavirus Job Retention Scheme, the company was not entitled to claim based on the employee's increased salary.

Laser Byte Ltd was a small company providing software development services by Mr Puttock, who was the sole employee. He generally paid himself a small salary, taking the balance of earnings as dividend, with the amount varying from year to year, depending on whether the business was doing well.

On 4 March 2020, the company reported a salary of £550 for the period ending 28 February 2020 for RTI purposes.

Later, on 29 March 2020, the company made an amendment for RTI purposes, reporting a salary of £2,000 paid (or payable) in the same month, claiming that this salary had been increased to £2,000 in February 2020.

The company argued that the CJRS claim should be based on the increased salary but HMRC disagreed,

Decision

The First Tier Tribunal dismissed the appeal as the cut off for determining the salaries to be used was 19 March 2020.

The reference salary for CJRS purposes was £550, as the £2,000 pay review did not take place until March and so was not payable to Mr Puttock in the February 2020, the latest salary period ending on or before 19 March 2020.

Laser Byte Ltd v HMRC (TC09237)

Income from jointly owned property (Lecture P1451 – 16.42 minutes)

Summary – Although the taxpayer honestly believed he was not required to notify the rental income generated from his property, 'it was not objectively reasonable' for him to have failed to consider the ramifications of his actions.

In 1999, Roy Bevan bought a property, which was subsequently let out from 16 February 2007.

In July 2022, HMRC sought details of income generated from the property. Roy Bevan replied, confirming that he jointly owned the property with his wife and that all of the income was his wife's income and covered by her personal allowance.

In January 2023, HMRC issued discovery assessments for the 15 years from 2006/07 and charged penalties for failure to notify chargeability to tax on that income.

Roy Bevan appealed, arguing that he was unaware that income from jointly let property was deemed to be split equally between spouses. Believing that the letting income was his wife's income, covered by her personal allowance, there was no reason to seek advice on the matter.

Decision

The First Tier Tribunal accepted that Roy Bevan was a 'credible witness' who did not know that income from their jointly owned property was deemed to be split equally between them.

However, the First Tier Tribunal found that this was not a reasonable excuse. He had failed to seek advice on the matter, simply assuming that he was correct. He had made no attempt to confirm the correct tax treatment for income generated when letting out property.

The appeal was dismissed.

Roy Bevan v HMRC (TC09225)

New rules for furnished holiday lettings (Lecture P1454 - 15.39 minutes)

It was announced at the time of the Budget in March 2024 that there was to be a change in the tax treatment of furnished holiday let property but we now have further specific details about those changes. Most of them were fairly easily predicted but there are some interesting aspects to the proposals. Draft legislation has also been published. It is quite complex legislation as there are a number of repeals and consequential changes that need to be made to change the legislation.

Current position

To qualify for FHL treatment in any tax year a property must:

- be available for letting for at least 210 days;
- be let for at least 105 days; and
- lettings for over 31 days must not total more than 155 days.

Owners of multiple FHLs may elect for the 105 day letting provisions to be averaged across multiple properties. The properties still have to be available for letting for at least 210 days; this cannot be averaged.

There is also the possibility that you can 'skip' a year where you did not qualify for FHL treatment but where it is treated as if continues although this is an alternative to the averaging situation, so it is not always straightforward.

The advantages of falling within the FHL regime can be summarised as follows:

- interest relief is available by deduction of the interest paid from business profits;
- income is net relevant earnings for pension contributions purposes;
- capital allowances can be claimed on plant and machinery for use in the property (normally you cannot get capital allowances on assets for use in a dwelling house);
- business asset disposal relief is available on sale of a property, assuming the conditions are met;

- holdover relief and rollover relief are available, again subject to the meeting of the relevant conditions.

New rules

The new provisions will apply from 6 April 2025 for individuals and unincorporated businesses and for accounting periods beginning on or after 1 April 2025 for companies (… any accounting period straddling that date is split into two so it effectively comes in from 1 April 2025). For capital gains purposes, it applies for transactions on or after the commencement date.

The basic change is that there will no longer be a separate category of properties with special treatment and those furnished holiday lets will be absorbed into (or become if no other property is rented out) the 'ordinary' property business. Since property within the EEA can qualify as furnished holiday lets, the property could become part of an overseas property business if they are not situated within the UK. UK and overseas property businesses are treated separately.

Going forward, this means that these properties will be subject to the same rules as apply for ordinary property businesses.

In particular:

- The finance cost restriction rules will apply so that relief for interest to acquire properties will be restricted as a tax reducer to the basic rate of income tax. This is going to have the same impact as when this measure was introduced for long-term residential letting. It may increase the rate of tax paid unless all income falls within, and remains within, the basic rate band.

- Capital allowances will not be available for qualifying plant and machinery and instead relief will be available only under the replacement of domestic items relief rules. Those latter rules are less generous as they only allow a replaced item to be claimed and only to the extent that there is no improvement element. There are also restrictions on assets which can be covered by the replacement allowance.

- The capital gains reliefs specified above will no longer be available.

- The income will no longer be treated as relevant UK earnings for the purposes of making pension contributions. This is likely to have less impact that the other changes as it is not something that is commonly seen.

Transitional rules

There will be no claw-back of capital allowances which have been claimed previously (through having a deemed disposal of assets at market value). This is useful as many landlords had assumed that there would need to calculate the market value of assets on which allowances had previously been claimed.

In addition, if there is a pool of unrelieved expenditure at the implementation date, the business will be able to continue claiming writing down allowance until the expenditure has all been relieved. Given that annual investment allowance is typically available, there may not be many businesses to which this applies.

Effectively, the rules precluding the claiming of relief will apply only to expenditure incurred on or after the operative date. Landlords of FHL property may wish to consider accelerating expenditure which might qualify for capital allowances to before the date of change.

Under current rules, losses arising from FHL businesses can only be carried forward and set off against future profits of that same FHL business (with the UK and overseas businesses being two separate businesses for these purposes). Once the FHL property has been merged into the ordinary property business, then the profits and losses from all profits will be reported as a single figure. UK and overseas property business will be treated as separate businesses.

In addition, any losses which have arisen in the FHL business before the repeal, those losses will be carried forward and be available to offset against total profits arising after the change. There is no ring-fencing of losses against the FHL property which is a huge relief!

In relation to the capital gains relief, properties which are FHL can currently qualify for roll-over relief, business asset disposal relief, gift relief, relief for loans to traders and substantial shareholding exemption. These reliefs will not be available after the date of the change but where criteria for relief includes conditions that apply in a future year, these rules will not be disturbed where the FHL conditions are satisfied after next April.

For example, if an individual were to buy a FHL property now and claim roll-over relief, then it would not theoretically qualify as a FHL before next April as you would not have 12 months of letting. However, this provision allows the roll-over relief to be claimed as long as the property remains as a FHL for the necessary period.

Specifically in relation to business asset disposal relief, there is a general ability to claim the relief up to 3 years after cessation of the business. Where the FHL conditions are satisfied for the qualifying period in relation to a FHL business which ceased before commencement of the new rules, the relief will be available for a disposal within the normal 3-year post-cessation period. This will also apply for disposals of shares following cessation of a trading activity where the cessation was before commencement of these new rules and associated disposals where the date of the material disposal with which the disposal is associated is before 6 April 2025. The lapsing of the FHL special rules will not be a cessation for these purposes.

For substantial shareholdings exemption, there is a provision which allows the relief to be claimed if the conditions were met in the previous two years (even if it is not met at the time of the disposal) and this will continue to apply for disposals made on or after 1 April 2025. However, in determining whether the conditions were met at that earlier date, the FHL business is disregarded.

Finally, there is an anti-forestalling rule for all CGT purposes meaning that you cannot use an unconditional contract to obtain CGT relief under current FHL rules – this has applied since 6 March 2024. This legislation is very straightforward in that it applies where:

- an asset is disposed of under an unconditional contract during the pre-commencement period (the period beginning with 6 March 2024 and ending with commencement);
- but not conveyed until on or after the commencement date; and

- subject to a relevant claim (being rollover relief, gift relief or business asset disposal relief).

However, this will not apply if:

- no purpose of entering into the contract was to avoid the impact of the abolition of the FHL rules; and

- either the contract was entered into wholly for commercial reasons or the parties to the contract are not connected persons; and

- the claim includes a statement that the conditions are met.

This means that sales of property which are undertaken before the date of the change but genuinely do not complete in time will be able to benefit from the relevant reliefs but it will be up to the taxpayer to be happy that there is no argument that could be made by HMRC that the transaction is tax motivated. Someone selling because they want to get BADR before the change but simply doesn't get the transaction through in time might be in a difficult position. These measures are designed to attack transactions with connected parties where there are no third-party seller identified at the time of the sale but it is a grey area.

Contributed by Ros Martin

Business investment relief denied (Lecture P1451 – 16.42 minutes)

Summary – Business investment relief in respect of an investment in a company controlled by the taxpayer was withdrawn, as using a director's loan account to fund personal expenses amounted to the extraction of value from the company.

In 2016, Benoît d'Angelin was UK resident but not UK domiciled and so taxable on the remittance basis.

With legal advice, he invested £1.5 million of his foreign income in a newly formed UK company in which he was the sole director. This investment was made with the expectation that it would qualify for Business Investment Relief, and so the £1.5 million would not be treated as remitted to the UK.

For Business Investment Relief to be available on foreign funds brought into the UK by non-domiciled individuals, resident in the UK:

1. the investment needed to be a qualifying investment, with the funds invested within 45 days of being brought to the UK;

2. neither the taxpayer, nor any "relevant person", must have received any benefits in connection with the making of the investment. However, payments received in the ordinary course of business and on arm's length terms are allowed. This is known as the 'extraction of value rule'.

Benoît d'Angelin used his company credit card to pay, amongst other things, personal expenses including the private use of a jet. These expenses were debited to his director's loan account, which eventually stood at around £71,000. However, at all times, Benoît d'Angelin had sufficient personal funds either to pay off the loan account or to have met the personal expenses himself.

Despite this, following an enquiry, HMRC concluded that the use of the loan account breached the second of the conditions above, representing an 'extraction of value' from the company, and so denied Business Investment Relief in its entirety This increased in Mr d'Angelin's tax payable by about £675,000.

Benoît d'Angelin appealed on several grounds.

Decision

The First Tier Tribunal disagreed that the proper interpretation of the legislation meant HMRC should have considered whether there was a net extraction of value. There was no need for him to have ended up better off; in fact an extraction of value of just £1 would have been enough to result in the loss of relief for the whole investment. Indeed, his legal advisers had made this clear by stating, in writing:

> "Excessive remuneration <u>or use of company's assets personally</u> would be treated as an extraction of value and would breach the conditions of the relief."

Secondly, the First Tier Tribunal found that the use of the director's account was not temporary, as argued by the taxpayer, but in fact continued for a significant length of time. This clearly provided a benefit to the taxpayer.

Finally, the First Tier Tribunal found that the value extracted was not provided in the ordinary course of business, on arm's length terms. A director's loan account is used in the ordinary course of business but it was not operated on the same terms as other loans negotiated at arm's length terms. There was no formal contract, and it was interest free.

The appeal was dismissed.

Mr Benoît D'Angelin v HMRC (TC09186)

Appointment of trust dividend **(Lecture P1451 – 16.42 minutes)**

Summary – HMRC had been on a 'fishing expedition' and so the First Tier Tribunal was entitled to direct HMRC to issue closure notices.

Robert Hitchins set up what proved to be a successful family company, RHG, later transferring ownership to two Bermuda based companies, which were owned by him.

In 1999, he settled shares in the Bermudan companies into an offshore trust, giving the trust a 100% indirect holding in RHG.

His three sons, Jonathan, Jeremy and the late Stephen Hitchins, were directors of RHG but were never shareholders.

For the year ended 31 March 2004, RHG paid a $40 million dividend.

Believing that the three brothers were beneficiaries of the trust, HMRC opened enquiries into the brothers' tax returns for tax years between 2012/13 and 2019/20. HMRC were seeking to establish whether the dividend, together with its ‘its onward transmission’, gave rise to a charge under the Transfer of Assets Abroad legislation.

A number of information notices were issued, with all of these being either withdrawn or successfully appealed.

All three brothers applied to the First Tier Tribunal to direct HMRC to issue closure notices for all years being questioned.

The First Tier Tribunal found that the RHG dividend had been appointed by the trust to beneficiaries, who were not the brothers. Further, there was no evidence to support HMRC’s belief that the funds had been transferred to or for the benefit of the three brothers, or indeed, that they had received any related benefit.

The Tribunal stated:

> “Whilst HMRC have not received answers to all of their questions, I consider that the outstanding questions relating to the £40m distribution do not have a reasonable basis and amount to a fishing expedition.”

HMRC had been on a ‘fishing expedition’, that had continued for too long. The Tribunal continued that HMRC had “more than enough information on which to be able to close the enquiry”.

Consequently, it directed that HMRC issue a closure notice for the periods under enquiry within six weeks of the date on which the Decision was released.

This direction was suspended pending HMRC’s appeal.

Decision

On appeal, the Upper Tribunal agreed with the First Tier Tribunal. There were no errors of law in the decision that was reached. The First Tier Tribunal had reached an ‘evaluative decision’ based on the relevant evidence that was available.

The Upper Tribunal confirmed the First Tier Tribunal’s conclusion that “HMRC’s outstanding questions did not have a reasonable basis, was within a reasonable range of conclusions and it was entitled to reach on the evidence.”

Summing up, the Upper Tribunal found that the First Tier Tribunal had taken into account and balanced a variety of factors in reaching its conclusion and saw no reason to interfere with its decision.

HMRC's enquiries should be closed and the appeal was dismissed.

HMRC v Jonathan Hitchins & Others [2024] UKUT 00114 (TCC)

Capital taxes

Insufficient shareholding (Lecture P1452 – 13.00 minutes)

Summary - In claiming Entrepreneurs' Relief, the taxpayers had acted carelessly by failing to take appropriate professional advice. HMRC's decision not to suspend the penalties was not flawed.

Philip and Deborah Cox, a married couple, were directors in David Williams IFA Holdings Ltd, a company that traded as financial advisers. Each held approximately a 6% of the company.

In 2018, the taxpayers, together with other shareholders, decided to sell their shares to continuing shareholders. A meeting was held, during which the taxpayers were advised by their solicitors that as each shareholder held more than the required 5% interest in the company, they would qualify for entrepreneurs' relief on the disposal, with any gains taxable at 10%. All at the meeting were aware of the 5% limit which was necessary in order to claim Entrepreneurs' Relief.

However, in order to more accurately reflect each individual's contribution to the business, the directors decided that the consideration should be split in a different manner and in order to facilitate this, the couple each gifted shares to other shareholders, reducing their ownership to approximately 4% each. One of the directors "felt sure it would not lead to any CGT, as the gift would qualify for holdover relief from CGT, and that there would be no inheritance tax issues as the shares to be gifted were business property". Entrepreneurs' relief was not revisited at this time.

The gift of shares went ahead in April 2019 and the following month, the couple disposed of their remaining of shares, claiming for Entrepreneurs' Relief in their 2019/20 tax returns.

HMRC opened an enquiry, during which time the couple accepted that they were not entitled to claim Entrepreneurs' Relief as their shareholding was below the required 5% throughout the two years prior to the disposal. However, HMRC issued a penalty on the basis that the taxpayers had acted carelessly in respect of the failed claims, calculated as 15% of the Potential Lost Revenue.

Philip and Deborah Cox appealed, claiming they had taken reasonable care, or alternatively that HMRC should suspend the penalties with the condition that, going forward, they would attend an annual meeting with their accountants to review each entry on their return before it was submitted, so ensuring that this did not happen again.

Decision

The First Tier Tribunal found that Philip and Deborah Cox had acted carelessly by failing to take follow-up professional advice after changing their shareholding. Their tax returns were completed based on previous advice given relating to different facts. Relying on the words of other shareholders was not good enough.

The Tribunal moved on to consider whether the penalty could be suspended and noted that HMRC may exercise its discretion to suspend penalties for carelessness.

However, this can only be done if it would help the taxpayer avoid becoming liable to future penalties for careless inaccuracy. The inaccuracy in this case was a one-off event, which meant suspension was not an option. HMRC's decision not to suspend the penalty was not flawed.

Philip Cox and Mrs Deborah Cox v HMRC (TC09198)

Principal private residence relief cases (Lecture P1453 – 21.46 minutes)

It is a source of continuous wonderment that despite the basics of the PPR legislation having been enacted over 60 years ago, there is rarely a month without a major case on PPR. This is due to two salient factors. The first is that the legislation itself is worded in a way which leads to subjective judgement.

Looking at section 222 of the Taxation of Chargeable Gains Act 1992, is couched in terms which require the interpretation by the courts on many occasions. These include determining what is a residence; whether an individual has occupied a property as his only or main residence; the definition of a dwelling, what grounds are eligible for PPR and the definition of ownership. These concepts have all been tested in the courts. The courts have also looked at the importance of the intention to make a dwelling one's residence.

There have been two recent cases, one of which caught the attention of the wider media and may lead to clients asking further questions in this area.

Andrew Nunn v HMRC (TC09127)

In 1995 Andrew Nunn bought a property in Oxfordshire for £120,000 with a garden of less than 0.5 hectares, living in it as his main residence. In 2015, he agreed to sell part of garden to a property developer for £295,000, who obtained planning permission in April 2015 to build 2 houses on the land. By June 2016 contracts for sale had not been agreed but the developer was keen to begin work. Andrew Nunn signed a letter from the developer agreeing that construction work could start. The builder erected a fence to partition the land from the remaining garden and began work

A formal contract of sale was signed on 7 September 2016 with £195,000 paid immediately with a further £100,000 was due on the completion of the sale of the second house to be built. By 7 September 2016, the house foundations and brick walls for the first storey were in place. In 2018, Andrew Nunn submitted his 2016/17 tax return declaring sale proceeds of £195,000, allowable costs of £222,000, resulting in a loss of approximately £27,000. On 18 December 2018, HMRC opened an enquiry into the tax return, later issuing a closure notice denying any loss relief.

HMRC stated that the disposal date for CGT was 7 September 2016 and by that date the land was a building site, no longer part of the garden. Consequently, HMRC sought to collect CGT of £72,634 with PPR relief denied. Andrew Nunn appealed, arguing that disposal of the 'garden' took place in June 2016 when the land was part of his garden forming part of the permitted area of his main residence.

The June 2016 letter was not a contract for sale – it simply allowed the developer to commence work on the development. It contained nothing showing a definite intention to bring about the immediate land disposal. Under normal circumstances, the CGT date of disposal was 7 September 2016, the date on which Andrew Nunn no longer owned the property.

The effect of the letter was that construction work started and Andrew Nunn no longer used the land as part of his garden. Andrew Nunn 'did not dig the foundations or lay the bricks himself', but he was carrying out development activities through a professional property developer.

There had been a deemed disposal of the property to trading stock (s.161 TCGA 1992). As the land was still a garden and not separated from his house at that time, PPR relief applied. Any further disposal of that land would normally be subject to tax as a trading transaction.

This case shows the possibilities of selling a parcel of land and making a gain which is free of capital gains tax and income tax. The important factor is not to fence off the garden before it is sold.

Elizabeth Rooke v HMRC (TC09170)

Her brother bought a flat for £225k but in Oct 1999 He needed funds to buy a home, so Elizabeth Rooke bought an interest (90/225) in the flat for £90,000 when the flat was valued at £255,000. In 2003, she increased her ownership share so that they owned the flat equally, paying £44,865 to acquire a further 14.71% interest based on the Market Value at that time. She also contributed £23,924 towards the cost of a lease extension. During her ownership period, the flat was let or available to let to third party tenants. In October 2013, she moved in, occupying the flat as her main residence. She moved out in February 2015, four months before the flat was then sold and the net proceeds were split in equal shares between Elizabeth Rooke and her brother. Elizabeth Rooke completed a paper tax return in time, claiming the following deductions:

- The initial £90,000 paid in October 1999;
- £24,000 and £192,000 that she claimed she had paid in 2001;
- The additional equity purchase of £44,865;
- ease extension costs of £23,924;
- PPR relief of £57,047 (24 + 18 months of occupation, out of 188 months of ownership);
- Letting relief: £40,000 (lower of PPR relief given, the gain attributable to letting. She amended her return twice, reducing her costs and so increasing the capital gains tax due.

In March 2020 she wrote to HMRC claiming she had overpaid CGT by £18,881 due to mistakes. She claimed she had originally acquired 76.6% (90/117.5) of the flat being her share of the "free equity" (£117,500) in the flat in October 1999, i.e. the value after having deducted the mortgage. PPR relief claimed should be based on 13 + 18 months. But her proceeds remained at 50%, despite asserting that she had acquired over 91% of the property (76.6% + 14.71%) and £40,000).

HMRC rejected her claims that her interest in 1999 was determined using the un-mortgaged element of the flat's value, she had made another equity purchase in 2001 Crucially she produced no evidence to support these claims and consequently, her claims for PPR relief and lettings relief were incorrect.

HMRC calculated that she was entitled to PPR relief of 21 months, being: 17 months of occupation between October 2013 and February 2015, plus the final four months of ownership between February 2015 and the sale in June 2015 i.e. £33,349. Consequently, her claim for lettings relief was restricted to £33,349. Elizabeth Rooke appealed. The FTT agreed with HMRC's analysis, and the appeal was dismissed.

The importance of this case is the need to get the facts straight at the beginning rather than recalculations which are likely to lead to a challenge. The second reason why PPR has become such a large issue is demonstrated by the two cases. The rise in property prices. This has meant that even relatively short periods that are not covered by PPR can lead to a sizeable chargeable gain. This has been reinforced by the cut in the annual exemption from £12,300 two years ago to its current level of £3,000.

Contributed by Jeremy Mindell

Form P1000 available on gov.uk (Lecture P1452 – 13 minutes)

On the death of a taxpayer an agent's authority to act on their behalf is revoked.

Form P1000 is then used to notify HMRC who will be acting as personal representative of the deceased's estate. It should be used, rather than completing a form 64-8.

Historically, Form P1000 was only available by requesting HMRC to send a paper form but now it is available online on gov.uk.

https://www.gov.uk/government/publications/tell-hmrc-about-who-is-dealing-with-the-estate-when-someone-dies

Woodlands made property mixed use (Lecture P1452 – 13 minutes)

Summary – The purchase of a large property with a twelve-acre wood was found to be mixed use for SDLT purposes.

In January 2021, Marie Guerlain-Desai bought Durford House in Hampshire, which comprised of a six-bedroom property set in 16.6 acres of land, including a triple garage, outbuildings, 4 acres of private formal gardens and approximately 12 acres of mature woodlands to the rear. The SDLT paid at that time was calculated on the basis that the residential rates applied to the £3,160,000 consideration paid for the property.

In April 2021, Marie Guerlain-Desai's agent issued a letter to HMRC making amendments to the SDLT return, claiming that the woodlands meant that the property was liable to the lower, non-residential property. They requested a refund of £225,250 plus interest.

In February 2022, having enquired into the purchase, and more specifically the validity of the amended return, HMRC issued a closure notice denying the claim that the non-residential rates applied

Following a statutory review, Marie Guerlain-Desai appealed to the First Tier Tribunal.

The key issue was whether the woodland to the rear of the property was part of the gardens and grounds of the dwelling house.

Decision

HMRC claimed that the woodlands could be viewed from the dwelling house and they provided “a treasured view to the dwelling” and “a degree of privacy and security from users of nearby public footpaths”. However, at the hearing, HMRC confirmed that no one from HMRC had visited or had actually seen the property.

By contrast, Marie Guerlain-Desai’s provided sound evidence. There was in fact no view of the woods from the house, and the woodland was not fenced off. Her woodland formed part of the Durford Wood Estate, an area with four woods covering 30 acres and 35 residential properties, situated in the South Downs National Park. Local residents had used each other's woodland areas for daily walks but more significantly, so too did members of the general public. It was a favoured spot for the local community. This was supported by a series of photographs which showed clear paths, connecting the woods to other woodland areas, including the woodland open to the public owned by the National Trust.

There was a separate resident’s company, Durford Wood Landowners Limited, that managed Durford Wood. All shareholder residents were required to:

- discuss an annual budget to maintain the woodland;
- ensure there was an adequate sinking fund and a road reserve fund for the maintenance of access roads;
- abide by the decisions of the management company.

The tribunal concluded that that the woodland was more like common land. It was not part of the dwelling house or its fenced off grounds as it could not be seen from the house and provided no privacy or security.

The taxpayer’s appeal was allowed.

Marie Guerlain-Desai v HMRC (TC09203)

Grounds of property did not include paddock (Lecture P1452 – 13 minutes)

Summary – A paddock acquired at the same time as a dwelling did not constitute part of the grounds of the dwelling for the purposes of SDLT.

In 2020 Taher and Zahra Suterwalla acquired a house to be used as their home, which included an indoor swimming pool, tennis court, pavilion, gardens and a paddock, that was not visible from the house, with access via a small gate.

On the day of purchase, they granted a one-year grazing lease of the paddock to a neighbour and filed their SDLT return on the basis that the property was mixed use as the paddock was let on a commercial basis.

HMRC disagreed, stating that the paddock was part of the grounds and so issued a closure notice amending the SDLT return to charge SDLT at the residential rate.

The First Tier Tribunal allowed the Suterwalla's appeal as there were two separate titles at the Land Registry, the sales brochure made no reference to stables or horses. The grazing lease was of commercial benefit to the couple and there was separate access to the paddock from the rest of the property.

HMRC appealed to the Upper Tribunal arguing that the First Tier Tribunal had erred:

- by treating the grazing lease as relevant when considering whether the paddock was part of the grounds;

- in deciding that the paddock was not part of the house's grounds, even if the grazing lease was considered.

Decision

The Upper Tribunal stated that when deciding whether the property acquired included land that was non-residential, the First Tier Tribunal should have focused on whether the paddock was part of the grounds of the house on completion. As the grazing lease did not exist at that time, it should not have formed part of the analysis. There was no evidence of any previous use of the paddock for commercial purposes. The grazing lease was an entirely new use of the paddock, that only started after the couple had acquired the property.

However, the Upper Tribunal found that the First Tier Tribunal's conclusion that the paddock was not part of the house's grounds at completion was supported by its other findings. The First Tier Tribunal had found that the paddock had a separate title at the Land Registry, was not close to or visible from the house and was accessed via a separate gate. The paddock did not form an integral part of the property.

The Upper Tribunal found that the First Tier Tribunal was entitled to conclude that the paddock was not part of the grounds of the house, even without the grazing lease,

HMRC's appeal was dismissed.

Mr Taher Suterwalla and Mrs Zahra Suterwalla v HMRC [2024] UT 00188 (TCC)

Administration

Attempt to avoid full IR35 hearing (Lecture P1451 – 16.42 minutes)

Summary – A preliminary issues hearing was not appropriate, as the preliminary issue could not be entirely divorced from the other grounds of appeal.

Jelly Vine Productions Ltd was Jeremy Vine's personal service company. This case concerned his work on the TV programmes Eggheads and Points of View.

HMRC:

- decided that Jeremy Vine personally performed services for the BBC during the period 1 July 2013 to 30 December 2015 on these programmes and so, under the IR35 rules, should be treated as an employee.
- issued protective determinations under:
  - Income Tax (PAYE) Regulations SI 2003/2682, reg 80;
  - Social Security Contributions (Transfer of Functions etc) Act 1999, s 8,

In the letter accompanying the assessments, HMRC stated:

> "I do not have sufficient facts at present upon which I can issue an opinion on your employment status and these assessments are not an indication of where we are in that process."

The company appealed, claiming that HMRC's decisions were premature and so invalid and requested a preliminary issues hearing.

HMRC considered the company's position to be 'entirely novel'. It was agreed that no case has previously considered how the phrase 'appears to [HMRC] that there may be tax payable' is to be determined or what the exercise of best judgment looks like. HMRC said 'the bar is a very low one' – all that is required is for it to appear to HMRC that tax may be payable, and that the amount be determined to the best of HMRC's judgment.

Decision

The First Tier Tribunal stated that the 'prospects of the appellant articulating a legal interpretation of the statutory words against which it can be shown that on the respective issue dates it did not "appear to HMRC that tax may be payable" is impossibly small such that it cannot justify the resources associated with a preliminary issues hearing'.

Referring to Pegasus Birds Ltd, the First Tier Tribunal considered that, as with a VAT assessment, 'unless there is some pleaded allegation of vindictiveness or dishonesty on the part of HMRC, the evaluation of whether it appeared to HMRC that tax may have been payable is going to be entirely intertwined with the evidence of liability to tax and require an assessment of what the officers were entitled to reasonably conclude on the evidence available to them'.

The Tribunal concluded that the 'most effective and thereby just and fair means' of determining the appeal was for all the factors to be heard in a single hearing.

The company's application for a preliminary issues hearing was denied.

Jelly Vine Productions Ltd v HMRC (TC9218)

Adapted from the case summary in Taxation (25 July 2024)

Confusion over payment deadline (Lecture P1451 – 16.42 minutes)

Summary – Despite failing to notify his chargeability to income tax and missing the 31 January payment deadline, the taxpayer was able to avoid the penalties charged by HMRC.

On 7 December 2022, Hadleigh Cohen signed up to receive paperless contact from HMRC.

On 5 February 2023, HMRC issued an online notice to file a tax return for 2021/22 to his Personal Tax Account and four days later sent an email alert to his verified email address.

Hadleigh Cohen sought assistance from HMRC's digital assistants through the online Extra Support Team, during which time he was told:

- he would not be charged a penalty if his tax return was filed on, or before, 28 February 2023, the date he had indicated he would be able to file the return by;
- penalties, and interest, would be charged if payment was received late.

Unfortunately, he was disconnected before he had time to clarify what the difference was between "filing" and "payment".

In a second online conversation, he was:

- was informed that he had three months to complete the 2022 tax return as his Self Assessment record was only set up on 26 January 2023.
- given his UTR, having gone through security checks.

Hadleigh Cohen filed his tax return, electronically, on 26 April 2023 and the tax due was paid in full at that time.

On 2 May 2023, HMRC imposed a penalty for late payment of tax and Hadleigh Cohen appealed to the First Tier Tribunal.

Decision

Under s.59B(3) TMA 1970, where a taxpayer notifies his chargeability to income tax to HMRC before 5 October following the end of the year of assessment to which the tax relates, but he does not receive a notice to file a tax return in respect of the relevant year of assessment until after 31 October, they have three months from the date that the notice to file was issued to pay tax.

However, the First Tier Tribunal confirmed that Hadleigh Cohen did not notify his chargeability to income tax by the 5 October 2022 deadline. Consequently, under s.59B(4) TMA 1970, the payment date was 31 January 2023. By not paying his tax until April 2023, he had missed the statutory due date for payment.

However, the First Tier Tribunal found that it was clear from the Hadleigh Cohen's questions to the HMRC advisers that he was trying to meet the deadlines and was seeking help to establish what he needed to do. These were the actions of "a prudent taxpayer exercising reasonable foresight and due diligence" and "it was objectively reasonable" for Hadleigh Cohen "to have believed that he had three months to both file his tax return, and pay the outstanding tax liability

Hadleigh Cohen's appeal was allowed.

Hadleigh Cohen v HMRC (TC09254)

Other HMRC information notices **(Lecture P1455 – 10.01 minutes)**

This article considers information notices issued by HMRC under the provisions of Schedule 36, Finance Act 2008, to the extent not covered in other sessions. This means information notices covering persons whose indentity is not known, and notices about persons whose identity can be ascertained.

Types of information notices

Schedule 36, Finance Act 2008, permits HMRC to issue five types of information notices:

1. Taxpayer notice (Para 1);
2. Third party notice (Para 2);
3. Financial Institution Notice (Para 4A);
4. Identity unknown notice (Para 5);
5. Identification notice (Para 5A).

The first three types of notices have been covered in dedicated articles. This article will cover the fourth and fifth type of notice.

Paragraph 5 information notice (Identity unknown notice)

The provisions of Paragraph 5(1), Schedule 36, Finance Act 2008, permit "an authorised officer" of HMRC to issue a notice, in writing, requiring a person to provide information or produce a document, providing the condition at Paragraph 5(2), Schedule 36, Finance Act 2008 is met. The condition at that paragraph is that the information or document is reasonably required (by the officer) for the purpose of checking the tax position, or for the purpose of collecting a tax debt, of:

a) "a person whose identity is not known to the officer, or
b) a class of persons whose individual identities are not known to the officer".

The authorised officer must follow the relevant HMRC protocols where the approval of the tribunal is to be requested for the issue of the notice.

The general restrictions and rules relating to information notices apply to notices issued under the above provision. In addition, there are specific rules that also apply, for which see below.

Approval of notices

The issue of a notice under Paragraph 5, Schedule 36, Finance Act 2008 requires the approval of the tribunal.

Paragraph 5 (4) states that the tribunal may not approve the giving of the notice "unless it is satisfied that:

a) the notice would meet the condition in sub-paragraph (2);

b) there are reasonable grounds for believing that the person or any of the class of persons to whom the notice relates may have failed or may fail to comply with any provision of the law (including the law of a territory outside the United Kingdom) relating to tax;

c) any such failure is likely to have led or to lead to serious prejudice to the assessment or collection of tax; and

d) the information or document to which the notice relates is not readily available from another source".

Paragraph 5A information notice (Identification notice)

The provisions of Paragraph 5A(1), Schedule 36, Finance Act 2008, permit "an authorised officer" of HMRC to require a person, by notice in writing, to provide "relevant information" about another person, being the taxpayer, providing certain conditions are met.

The conditions are that:

a) the information is reasonably required by the officer for the purpose of checking the tax position of the taxpayer or for the purpose of collecting a tax debt of the taxpayer;

b) the taxpayer's identity is not known to the officer, but the officer holds information from which the taxpayer's identity can be ascertained;

c) the officer has reason to believe that:

    a. the person will be able to ascertain the taxpayer's identity from the information held by the officer, and

    b. the person obtained relevant information about the taxpayer in the course of carrying on a business;

d) the taxpayer's identity cannot readily be ascertained by other means from the information held by the officer.

In the context of these notices, “relevant information” (see Paragraph 5A (6)) “means any or all of the following -

a) name;

b) last known address; and

c) date of birth (in the case of an individual)”.

The reference to the need for HMRC to hold information from which the taxpayer’s identity can be ascertained, can include, for example, a credit card number, from which the credit card company can provide HMRC with the relevant information. It should be noted that an identification notice does not allow for the provision of documents, only information. In the case of a credit card number, HMRC would not be able to request credit card statements in the information notice.

When HMRC obtain information as a result of compliance with the identification notice, they can then consider their use of other information powers to obtain further information or documents from the person concerned.

The provisions of Paragraph 5A apply for the purpose of checking the tax position of, or for the purpose of collecting a tax debt of, a class or persons as for the purpose of checking the tax position of, or for the purpose of collecting a tax debt of, a single person.

An identification notice does not require the approval of the tribunal, but it must be authorised and issued by an authorised officer. The internal HMRC procedure prior to the issue of an identification notice is less stringent than that in relation to an identity unknown notice not requiring the approval of the tribunal.

Appeals

There is the ability for the recipient of a notice issued under either paragraph 5 or 5A to appeal against the notice, or any requirement in the notice, but only on the ground that it would be unduly onerous to comply with the notice or requirement (Paragraph 31, Schedule, 36, Finance Act 2008) (subject to certain exceptions).

Exceptions

There are exceptions, and specific provisions, including in relation to the need for tribunal approval, and the rights of appeal, in relation to certain notices issued under Paragraph 5 in connection with the following:

- Any pensions matter (see Paragraph 34B, Schedule 36, Finance Act 2008);
- A group of undertakings (see Paragraph 35 (5), Schedule 36, Finance Act 2008);
- Partnerships (see Paragraph 37 (6), Schedule 36, Finance Act 2008).

In addition to the above exceptions, there are supplementary provisions relating to auditors and tax advisers, for which see Paragraph 26 (2), Schedule 36, Finance Act 2008.

Penalties

In the addition to the general penalty provisions, there is the ability for an increased daily default penalty to be charged for failure to comply with a notice issued under Paragraph 5, Schedule 36, Finance Act 2008. The increased maximum may not be more than £1,000, and is determined by the tribunal. The higher penalty can be sought where a penalty under Paragraph 40 is assessed under Paragraph 46 for a person’s failure to comply with the notice, and the failure continues for more than 30 days, beginning with the date on which notification of the assessment was issued. In addition, the person must have been told that an application may be made under the relevant provision for an increased daily penalty to be assessable.

Where the relevant provisions have been met, an HMRC officer may apply to the tribunal for an increased daily penalty to be applied. If the tribunal determines that an increased daily penalty should apply, the tribunal must determine the day from which the increased daily penalty is to apply, and the maximum amount of that penalty (Paragraph 49A (3), Schedule 36, Finance Act 2008) (which may not be more than £1,000, rather than the standard £60).

In determining the new maximum amount, the tribunal must have regard to:

a) “the likely cost to the person of complying with the notice;

b) any benefits to the person of not complying with it; and

c) the benefits to anyone else resulting from the person’s non-compliance”.

(see Paragraph 49A (5), Schedule 36, Finance Act 2008).

Contributed by Phil Berwick, Director at Berwick Tax

Deadlines

1 September 2024

- Corporation tax for periods to 30 November 2023 if not liable to pay by instalments
- Check HMRC website for changes to car mileage fuel rates

7 September 2024

- Due date for VAT return and payment for 31 July 2024 quarter (electronic)

14 September 2024

- Quarterly corporation tax instalment payment for large companies
- Paper monthly EC sales list – businesses based in Northern Ireland selling goods

19 September 2024

- PAYE/NIC/student loan/CIS for month ended 5 September 2024 if by cheque
- File monthly construction industry scheme return

21 September 2024

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

22 September 2024

- PAYE/NICs/student loan/CIS payments for month to 5 September 2024 if paid online

30 September 2024

- Companies House should have received accounts of:
  - private companies with 31 December 2023 year end
  - public limited companies with 31 March 2024 year end
- CTSA returns for companies having an accounting period ended 30 September 2023
- End of CT61 quarterly return period
- Business rates – small business relief claims for 2023-24.
- Businesses to reclaim EC VAT chargeable in 2023.
- 30 June 2024 period end companies to notify if profits in diverted profit tax regime

News

Budget & key announcements (Lectures P1452/ B1451 – 13.00/ 25.14 minutes)

On 29 July 2024, the Chancellor of the Exchequer confirmed that the Budget would be delivered on 30 October 2024.

We were also provided with an update on a number of key tax measures.

https://www.gov.uk/government/speeches/chancellor-statement-on-public-spending-inheritance

https://questions-statements.parliament.uk/written-statements/detail/2024-07-29/hcws32

Private school fees

The government has published a technical note detailing its plan to introduce 20 per cent VAT on education and boarding services provided for a charge by private schools across the UK from 1 January 2025.

This is covered in detail in the VAT section of these notes.

Abolishing the Furnished Holiday Lettings regime

The government has confirmed that the Furnished Holiday Lettings tax regime will be abolished from April 2025, with anti-forestalling rules applying from 6 March 2024.

This is covered in detail in the Personal tax section of these notes.

Taxation of non-UK domiciled individuals

The government has published a policy note confirming its intention to replace the existing domicile-based inheritance tax system with a new residence-based system from 6 April 2025.

The basic test for whether non-UK assets are in scope for IHT from 6 April 2025 is expected to be whether a person has been resident in the UK for 10 years prior to the tax year in which the chargeable event (including death) arises, with provision to keep a person in scope for 10 years after leaving the UK.

The government plans to implement the four-year foreign income and gains regime that was announced by the previous government, which will take effect for foreign income and gains arising from 6 April 2025. However, in the first year, there will be no 50% reduction in foreign income subject to tax where individuals lose access to the remittance basis.

The changes will end the use of offshore trusts to keep assets outside the scope of inheritance tax.

Full details of this reform will be provided at the Budget.

https://www.gov.uk/government/publications/2024-non-uk-domiciled-individuals-policy-summary/changes-to-the-taxation-of-non-uk-domiciled-individuals

Carried interest

Carried interest is a form of performance-related reward received by fund managers, primarily within the private equity industry.

The government has published a call for evidence confirming its intention to take action as it believes that the current tax regime, whereby such interest can be taxed at capital gains tax rates, does not reflect its economic characteristics, nor the risk taken on by fund managers.

https://www.gov.uk/government/calls-for-evidence/the-tax-treatment-of-carried-interest-call-for-evidence/b8a7b5ae-0fcd-49bc-bfd1-d5cf5f4a8599

Pillar 2: new anti-arbitrage rule

The government is publishing draft legislation to translate an internationally agreed anti-avoidance rule into UK legislation.

The draft legislation seeks to prevent multinational enterprises avoiding Pillar 2 top-up tax by exploiting a temporary simplification in the rules.

The legislation will apply from 14 March 2024 and will prevent multinational enterprises that enter into certain avoidance transactions from accessing the simplification.

Further, to provide certainty, the government is confirming that the UK will introduce the Undertaxed Profits Rule of Pillar 2 for accounting periods beginning on or after 31 December 2024.

https://www.gov.uk/government/publications/pillar-2-transitional-country-by-country-reporting-safe-harbour-anti-arbitrage-rule/07a36f83-b8e5-4d74-843a-fd5ab1b03a44

Energy Profits Levy reform

The government has published a policy document confirming its intention to increase the rate of the Energy Profits Levy to 38% from 1 November 2024 and extend that levy from March 2029 to March 2030.

The government will also remove the main investment allowance for qualifying expenditure incurred on or after 1 November 2024 and reduce the extent to which capital allowances claims (including first year allowances) can be considered in calculating levy profits.

Further details will be announced at the Budget.

https://www.gov.uk/government/publications/july-statement-2024-changes-to-the-energy-oil-and-gas-profits-levy/changes-to-the-energy-oil-and-gas-profits-levy

Dog and cat breeders' nudge letter

HMRC has identified animal breeders who may have failed to declare profits either by not including them in their Self Assessment return, or because they have not registered for Self Assessment.

These individuals are being contacted by HMRC by letter.

The letter:

- explains that individuals, whose total gross trading income from one or more trades is £1,000 or more in a tax year, must inform HMRC;
- advises individuals to make voluntary disclosure, and also how to register for self-assessment;
- informs individuals what will happen if they fail to take the appropriate action.

www.tax.org.uk/hmrc-one-to-many-letter-dog-and-cat-breeders-downstream

Business taxes

Failure to notify after 15 years (Lecture B1451 – 25.14 minutes)

Summary – HMRC had made valid discovery assessments but these were reduced to reflect additional deductible costs and the fact that the profits on the disposal of two properties were capital rather than trading profits.

In 2004, Kenneth Williams entered the property market buying four properties in April/ May 2004, followed by a further seven properties later in 2004 and in 2005. He renovated each of the properties before selling them on in 2004/05 and 2005/06.

On 22 June 2004, he wrote to HMRC enclosing his P60 for 2003/04, in which he claimed to have notified HMRC that he had commenced a property business as a sole trader. HMRC acknowledged receipt of the letter and their records showed that a Self Assessment return was issued for 2003/2004 as the P60 showed that he was a higher rate taxpayer. However, HMRC's records made no mention of a new sole trader property business. Once the tax return for that year had been received, his Self Assessment record was closed.

In October 2012, Kenneth Williams called HMRC asking for a UTR. This was followed in August 2013 by a request for a tax return for the year ended 5 April 2014. Kenneth Williams called HMRC to say that he had been receiving income from property since October 2013. At this point, HMRC re-opened his Self Assessment record.

In 2014, HMRC enquired into his property dealings, concluding in 2019, that he had made taxable trading profits in 2004/05 and 2005/06 on the disposal of nine of the properties; two of the properties qualified for principal private residence relief as they were, at some point, occupied as his main residence.

HMRC issued assessments totalling a little over £14,000 and penalties of around £8,000 on the basis that he had failed to notify HMRC that he was chargeable to tax for the relevant years. Following review, these numbers were reduced to £12,000 and £6,500 respectively.

Kenneth Williams appealed, claiming that he had notified HMRC that he was starting to carry out a property business in his letter dated 22 June 2004 so that there was no failure to notify. In any case, he claimed HMRC had not allowed all of the expenses he incurred as part of his business, which if deducted would mean no profit had been made.

Neither party had a copy of the letter dated 22 June 2004 but HMRC argued that had Kenneth Williams started to carry on a new property business as a sole trader, the self-assessment record would not have been closed as it would have been clear to HMRC that he would have needed to file a tax return for the year ended 5 April 2005. From their records, no tax returns were submitted for either 2004/05 or 2005/06, the years in question.

As well as considering whether the assessments were validly raised, the First Tier Tribunal needed to consider whether:

- certain expense deductions were in fact deductible; and
- two of the properties were bought as long-term investments with the intention of renting them out, such that any profit would be subject to capital gains tax.

Further, if the assessments were valid, the level of the penalties charged was also challenged.

Decision

The Tribunal accepted that HMRC made a discovery as a result of their compliance check which commenced in 2014 and that the relevant assessments were intended to make good the loss of tax which, in HMRC's opinion, had occurred.

The First Tier Tribunal found that while it was possible that HMRC simply overlooked the reference to the new property business in the June 2004 letter, this seemed unlikely. HMRC had clearly read the letter, reviewed the P60s and sent out a tax return for 2003/04. This letter did not notify HMRC of Kenneth William's chargeability going forward. Further, there was no evidence that returns had actually been submitted for either 2004/05 or 2005/06. The First Tier Tribunal found that Kenneth Williams was negligent by failing to notify HMRC of his chargeability to tax for 2004/05 and 2005/06, meaning that the 20-year time limit applied to the issue of the discovery assessments.

The expense costs under dispute related to property redevelopment and the renovation costs incurred totalling approximately £150,000; HMRC had allowed only £62,000. The First Tier Tribunal concluded that the taxpayer's claim was likely to represent a significant overestimate of the expenses incurred, as little evidence was forthcoming. However, the First Tier Tribunal accepted that, on the balance of probabilities, there were likely to be some expenses which HMRC had rejected arising as a result of not taking into account the cash withdrawals, to pay expenses, made in the branches rather than through cash machines. There were likely to be further deductible expenses arising as a result of HMRC's methodology relating to some contractors being paid by way of staged payments rather than the entirety of a particular project being paid in one go. From the lack of evidence supplied, the First Tier Tribunal was unable to quantify precisely which renovation costs should be allowed. Instead, the First Tier Tribunal adopted a "rough and ready approach looking at the evidence in the round and applying the balance of probabilities". They allowed a further deduction of £20,500 allocated across all of the properties in proportion to the expenses which had already been allowed in respect of those properties.

The First Tier Tribunal accepted that two of the properties purchased by Kenneth Williams were intended to be kept on a longer-term basis to rent out. The only reason they were sold was because he could not obtain buy-to-let mortgages. These were not trading transactions, meaning the profit on sale was subject to capital gains tax. The First Tier Tribunal stated that the parties would need to agree which expenses are deductible in these circumstances, as different principles now applied.

Finally, the First Tier Tribunal agreed that there should be a small, 5% reduction in the penalties as Kenneth Williams had made a voluntary disclosure of certain matters such as an additional four properties which HMRC had not included in their original list.

Kenneth Williams v HMRC (TC09171)

Making Tax Digital - Qualifying income (Lecture B1452 – 10.46 minutes)

HMRC has confirmed how it will work out whether the threshold for registering under Making Tax Digital (MTD) for income tax has been breached.

As a reminder, individuals will need to follow the requirements for Making Tax Digital for Income Tax if they are self-employed or a landlord from:

- 6 April 2026 where qualifying income exceeds £50,000;
- 6 April 2027 where qualifying income exceeds £30,000.

HMRC has confirmed that qualifying income is the total income in a tax year from self-employment and property, before deducting expenses.

To decide when an individual needs to register for MTD for a tax year, they will look at the tax return that should have been submitted in the January before the tax year being considered.

- For 2026/27, HMRC will look at the 2024/25 tax return, which should have been submitted by 31 January 2026 and check to see if qualifying income exceeds £50,000;
- For 2027/28, HMRC will look at the 2025/26 tax return, which should have been submitted by 31 January 2027 and check to see if qualifying income exceeds £30,000.

Where accounting periods are longer or shorter than 12 months, HMRC will annualise qualifying income.

All other sources of income reported through Self Assessment, such as income from employment, a partnership, or savings, do <u>not</u> count towards the qualifying income.

Income from more than one source

Income from all relevant sources will count towards qualifying income. For example, gross income (income before you deduct expenses) could be:

- £25,000 from rental income
- £27,000 from self-employment income

Total qualifying income is therefore £52,000.

Income from a jointly owned property

MTD for income tax may well represent a new challenge for many landlords, who currently have varying degrees of technological and tax knowledge, often deal with only a small number of transactions each month and may employ the services of a management agent to deal with their affairs. The new MTD regime may come as a shock as they will be expected to keep their own digital records, even where properties are owned jointly. and submit quarterly updates online.

Where a property is owned jointly, taxpayers must include their share of gross property income as qualifying income. For example, where a property is owned jointly and generates £56,000 of rental income in a tax year, each taxpayer will include their 50% share, so £28,000. If the taxpayer has no income from self-employment, they will be below the threshold for MTD. If a taxpayer has a jointly owned a property and only receives notice of their share of the income after expenses have been deducted, HMRC has confirmed that they will use the net figure for qualifying income.

While HMRC has clarified when and how property income must be reported, the record-keeping practicalities must also be addressed, especially when dealing with jointly owned properties.

Other types of income

Income from a partnership does not count towards qualifying income, unless received as disguised investment management fees or income based carried interest.

As the beneficiary of a bare trust, any property or trading income received will count towards qualifying income;

As the beneficiary of an interest in possession trust, any property or trading income that is paid directly to that individual will count towards qualifying income.

Qualifying care receipts will not count towards qualifying income

https://www.gov.uk/guidance/check-if-youre-eligible-for-making-tax-digital-for-income-tax#full-publication-update-history

Entertaining for corporation tax (Lecture B1453 – 15.30 minutes)

The Paris Olympics 2024 saw a considerable amount of corporate entertainment and may pose some challenges in terms of accounting for the entertainment costs. This article looks at some of the more unusual aspects when considering corporation tax computations.

Many years ago, entertainment was allowable for entertaining foreign customers. The perception was that this relief was being overused. However, there are still some opportunities for reducing the corporate tax cost.

The Paris Olympics indicates both some of the opportunities and the pitfalls.

The fact that the entertainment is taking place abroad does not of itself change the tax status of the entertainment costs. However, for a multinational with a considerable number of subsidiaries it is important from both accounting for the entertainment and potentially in terms of transfer pricing compliance that the costs are properly charged to the correct entities which may include overseas subsidiaries who have may have a more generous regime in terms of setting those costs against their corporate tax liabilities.

It is therefore important to determine the main purpose of the entertainment. Would it have gone ahead if there were no outside customers or suppliers. Was its primary purpose staff or business entertainment? One should remember that staff entertainment is generally deductible for business purposes whereas client/supplier entertainment is not. There is also the potentially difficult position for Owner Managed Businesses where the entertainment is neither for staff nor business contacts but is for relatives. It is potentially non-deductible for corporation tax purposes and there may be a benefit in kind charge as well.

One needs to also ensure that incidental expenses, such as for example, the travel and subsistence and hotel costs as well as incidentals such as programmes, drinks etc are included in the entertainment costs.

One factor which could create tax deductions is if the entertainment is part of an International meeting such as a conference or strategy meeting where costs can be apportioned. However, HMRC will often wish to see proof of the business activities including an agenda and, if there was a meeting of the management or directors, minutes of what was decided.

Even in an activity which may qualify for a tax deduction there may be elements which are taxable. For example, a dinner held abroad could be considered as subsistence if it is part of a conference, training session, strategic meeting etc. but when everyone retires to the bar that would be entertainment pure and simple.

Given that some of the reporting of costs arising from the Olympics will note be due until next year it is important to analyse these as soon as possible in order to ensure the correct adjustments are done before everyone forgets what happened.

Contributed by Jeremy Mindell

Artificial Intelligence to 'know your client (Lecture B1451 – 25.14 minutes)

Summary – The company was entitled to claim R&D credit for costs incurred in developing an *artificial intelligence analysis process for verification and risk profiling*

Get Onbord Limited was a Small or Medium-Sized Enterprise for the purposes of the R&D legislation that sought to develop a novel, automated artificial intelligence analysis process for 'know your client' verification and risk profiling. The analysis tool was to be used during a financial services customer onboarding process that would achieve a superior outcome to human analysis, while meeting all regulatory and legislative requirements.

The company submitted an R&D surrenderable loss claim, with significant supporting evidence, seeking a repayable tax credit from HMRC. However, HMRC rejected the claim as it considered that the company did not incur expenditure on qualifying "research and development". Broadly, the project did not advance overall knowledge or capability. The taxpayer submitted more information and, although HMRC said the work was 'impressive', it still maintained that it did not constitute R&D.

The company appealed.

Decision

The First Tier Tribunal noted that the HMRC officer dealing with the case had little to no knowledge of software technology. Indeed, this was the first software claim that he had ever dealt with.

By contrast, the First Tier Tribunal was impressed with the company's supporting evidence and found that the:

- project had a clear aim to develop an artificial intelligence analysis process;

- technology was not already publicly available or readily deducible and amounted to more than simply copying or adapting an existing product.

Consequently, the project costs did constitute qualifying R&D expenditure and the company was entitled to make the claim. The appeal was allowed.

Procedural matter

Having heard the case, HMRC sought to have the case reheard by a different Tribunal, arguing that the company's former director was not authorised to give evidence on behalf of Get Onbord Limited, as the company was in liquidation. The Tribunal stated that, on the appointment of a liquidator all the powers of a director cease, and so agreed that the director had no capacity to represent the company at the hearing. However, the Tribunal dismissed HMRC's application, deciding that the liquidators had the power to endorse the submissions made by the former director and to ask that the hearing stand. This would be fair and just, and "doing so would not run the risk of creating a precedent which could be cynically exploited in the future."

Get Onbord Limited (in Liquidation) v HMRC (TC09238)

'Magic' capital allowances avoidance scheme

Summary - The Court of Appeal allowed HMRC's appeal, overturning the ruling of the Upper Tribunal. The correct purposive interpretation involved looking at the intention of the legislation as a whole, rather than at a snapshot of each clause.

Altrad Services Ltd and Robert Wiseman and Sons Ltd took part in a marketed tax avoidance scheme designed to exploit the capital allowances rules applying in 2010 and 2011. (The law was subsequently amended by FA 2011 s 33 to make such arrangements ineffective.)

The scheme aimed to significantly increase the quantum of capital allowances available to the taxpayer companies, via a sale and leaseback arrangement with a bank. The assets would be reacquired by the companies after a few weeks, on the bank exercising a put option, which each company had granted at the outset.

The intended outcome was that the companies would claim additional capital allowances, on reacquisition of the leased assets, of £95 for every £100 of net sale disposal proceeds.

HMRC were notified under DOTAS and disallowed the additional capital allowances claimed. The scheme relied on there being a disposal event by the taxpayer under CAA 2001 s 61(1)(a), when the bank acquired the assets.

The taxpayers appealed to the First Tier Tribunal, who on a purposive interpretation under the *Ramsay* principle, accepted HMRC's argument that in reality, the taxpayer did not cease to own the assets, so there was no disposal event and no additional capital allowances were subsequently due. The First Tier Tribunal considered the scheme was purely tax-driven and devoid of any commercial purpose.

On appeal, the Upper Tribunal overturned this decision. The Upper Tribunal considered that the taxpayers had lost legal and beneficial ownership of the assets when they sold them to the Bank, so there was a disposal.

Decision

The Court of Appeal overturned the Upper Tribunal decision, holding that it had erred in applying the *Ramsay* principle to CAA 2001 s 61(1)(a) 'by reference to a snapshot in time'.

Following the Supreme Court decision in Rossendale Borough Council v Hurstwood Properties (A) Ltd*,* Wigan Council v Property Alliance Group *Ltd* [2021] UKSC 16, the correct purposive construction of CAA 2001 s 61(1)(a) was addressed in its context as an integral part of the statutory code relating to plant and machinery allowances.

The Court of Appeal observed that 'no rational legislature could have intended traders with existing allowances to be permitted to increase the amount of their capital allowances in such a way'.

The question to address was whether the taxpayers had ceased to own the assets which they sold to the bank, as a matter of ordinary language, and in a real and practical sense. By analogy, the Court of Appeal suggested that nobody would normally say an asset had 'ceased to exist as such' if it were dismantled and then reassembled on the next day. The Court of Appeal stated that 'the whole purpose of the scheme was that the same assets would be returned to the sole beneficial ownership of the taxpayers upon exercise of the put option by the Bank three weeks later, and that for all practical purposes the taxpayers would continue to have the uninterrupted beneficial use of the assets for the purposes of their trade in the meantime.'

In a 2023 Court of Appeal hearing ([2023] EWCA Civ 474), HMRC obtained approval to raise a new ground, that the taxpayers had not incurred qualifying expenditure. In the event, this argument was not considered by the court, as the issue was decided on the first ground alone.

HMRC v Altrad Services Ltd and another [2024] EWCA Civ 720

Adapted from the case summary in Tax Journal (5 July 2024)

Advisers' fees on sale of company **(Lecture B1451 – 25.14 minutes)**

Summary – Advisers' fees, incurred after the decision to sell its Dutch business was taken, were 'expenses of a capital nature' and therefore were not deductible as management expenses.

Centrica Overseas Holdings Ltd, an intermediate holding company in the Centrica plc group, owned the group's Dutch parent company, Oxxio BV, and its subsidiaries.

The Dutch business was persistently loss-making and the Centrica group decided to sell the business in June/July 2009. The sale process proved difficult and it was only in February 2011 that the group approved in principle a sale to the buyer, with the final agreement signed in March 2011.

Between July 2009 and March 2011, Centrica Overseas Holdings Ltd incurred fees for professional services provided by Deutsche Bank, PwC and De Brauw Blackstone Westbroek in connection with the sale ('the disputed expenditure'):

- Deutsche Bank provided advice negotiating the disposal process and evaluating potential purchasers;

- PwC prepared a vendor due diligence report and a 'deep dive' report, which helped the group understand the difficulties in the Oxxio BV business; and

- De Drauw provided Dutch legal advice and prepared the sale and purchase agreements.

Centrica Overseas Holdings Ltd claimed a tax deduction under s.1219(1) CTA for the disputed expenditure as expenses of management. The company accepted that fees incurred after 22 February 2011 were not deductible as those fees related to implementing the sale of the Oxxio BV business and were therefore capital in nature.

HMRC disallowed the claim on the basis that the disputed expenditure did not constitute expenses of management or, if it did, it was capital in nature.

The First Tier Tribunal dismissed the appeal but the Upper Tribunal overturned it, finding in Centrica Overseas Holdings Ltd’s favour. The decision was reversed again at the Court of Appeal finding that although the expenditure qualified as expenses of management, it was capital in nature. HMRC’s appeal was allowed

Having accepted that the expenditure was expenses of management, the company appealed to the Supreme Court, with the only issue remaining being whether the disputed expenditure was capital in nature.

Decision

The Supreme Court agreed with the Court of Appeal that the test for determining if management expenses, incurred by a company with investment business, are expenses 'of a capital nature' is the same test as applies for determining whether a trading company's expenses are 'items of a capital nature' (within the meaning of s.53(1) CTA 2009). Accordingly, it followed that the established case law relating to the revenue/capital distinction that applies in the context of trading companies applies equally to investment companies.

Surveying the case law on the revenue/ capital distinction, the Supreme Court concluded that payments incurred in bringing about the disposal of a capital asset are capital in nature, irrespective of whether they are incurred by a trading company or a company with investment business.

Here the disputed expenditure was incurred to assist with the disposal of an onerous capital asset and was therefore capital in nature.

In reaching this conclusion, the Supreme Court highlighted that:

- the three firms were engaged specifically for the process of disposing of Oxxio BV - there was no evidence that they were engaged more generally in advising Centrica Overseas Holdings Ltd on its investment business; and

- the fact that there was no certainty that the Oxxio BV business would be sold did not make the disputed expenditure revenue in nature - the fact that there is uncertainty in most transactions does not prevent expenditure on professionals, rendered to enable an investment company to reach a decision as to whether or not to make an acquisition or disposal, from being capital expenditure.

The professional fees were incurred to bring about the disposal of Oxxio BV, a capital asset and so should be regarded as capital in nature and so not deductible as an expense of management for corporation tax purposes.

Centrica Overseas Holdings Ltd v HMRC [2024] UKSC 25

Adapted from the case summary in Taxation (26 July 2024)

No DTR for stapled entity (Lecture B1451 – 25.14 minutes)

Summary - The company, which was stapled to a US company and so subject to worldwide taxation in the USA, was not entitled to double tax relief under the USA/UK treaty.

GE Financial Investments was a UK-resident member of the GE group and was the limited partner in a Delaware limited partnership. The general partner in the Delaware limited partnership was a USA-resident group member (GEFI Inc).

GE Financial Investments and GEFI Inc were 'stapled entities' for the purposes of US federal income tax as the shares in one could not be transferred without the shares in the other also being transferred to the same transferee. This resulted in GE Financial Investments being subject to US tax on its worldwide income. It claimed UK double tax relief in respect of the US tax for six consecutive accounting periods and HMRC rejected all of the claims.

The First Tier Tribunal had dismissed the company's appeal, holding that it was not resident in the USA under article 4 of the UK/USA double tax treaty and that it was not carrying on a business in the USA through a US permanent establishment within article 7 of the treaty.

The Upper Tribunal reversed this decision, allowing the company's appeal on the basis that it was resident in the USA under the treaty (although it held that the First Tier Tribunal was entitled to conclude that GE Financial Investments was not carrying on a business in the USA).

HMRC appealed and GE Financial Investments cross-appealed on the carrying on a business issue.

Decision

The Court of Appeal first considered whether GE Financial Investments was resident in the USA for the purposes of the treaty, finding that the Upper Tribunal had been wrong to conclude that the only criterion for residence in article 4 was worldwide taxation.

Article 4 required both the existence of a local connection falling within the enumerated criteria (domicile, residence, citizenship, place of management or place of incorporation) or of a similar nature and that the connection attracts worldwide taxation.

The Court of Appeal concluded that GE Financial Investments did not fall within any of the listed criteria, and it did not have a local connection 'of a similar nature' to those listed.

The US federal income tax law treating certain stapled entities as domestic corporations did not require any form of connection between the company itself and the USA, whether a formal legal one (such as incorporation) or a factual one (such as place of management).

The Court of Appeal said that 'the facts that the entity to which the company is stapled is itself US incorporated and that both entities are ultimately US owned cannot suffice'. GE Financial Investments was therefore not resident in the USA for treaty purposes.

The Court of Appeal went on to consider whether GE Financial Investments carried on a business in the USA. It agreed with the Upper Tribunal that the First Tier Tribunal had made no material error of law and that its conclusions were unsurprising.

The court therefore upheld the First Tier Tribunal’s decision that the Delaware limited partnership (and therefore GE Financial Investments as limited partner) acted merely as a passive holding vehicle for some loan receivables and was not carrying on a business.

HMRC v GE Financial Investments [2024] EWCA Civ 797

Adapted from the case summary in Tax Journal (26 July 2024)

VAT and other indirect taxes

Removal of VAT exemption for school fees (Lecture B1454 – 18.21 minutes)

Summary

The government has stated that about 94% of UK school children attend state funded schools. To ensure that every child has access to high-quality education, on 29 July 2024, the Chancellor announced that from 1 January 2025, the VAT exemption for private schools will no longer be available.

The VAT raised will be used to help fund:

- 3,000 new nurseries, helping parents back to work;
- breakfast clubs to all primary schools, so that no child starts school hungry;
- the recruitment of 6,500 new teachers and improve teacher and headteacher training.

Details of the government's plan are published in a technical note stating that from 1 January 2025, 20 per cent VAT will apply to education, vocational training and boarding services provided for consideration by private schools, or a closely associated body across the UK.

Historically

Education services, and closely related goods and services necessary for delivering education to pupils, that are supplied by an "eligible body" are VAT exempt (Sch. 9, Group 6 VATA 1994).

Currently, the term 'eligible body' includes private schools. Consequently, at present, no VAT is charged on private school fees, but such schools are not able to recover input tax suffered.

From 1 January 2025

The Chancellor has now confirmed that from 1 January 2025, all education services and vocational training supplied by a private school, or a "connected person", for consideration will be subject to VAT at the standard rate of 20%.

Pre-paid fees

Fees paid from 29 July 2024 relating to January 2025 terms onwards will be subject to VAT.

The government has stated that it will scrutinise schemes that were set up prior to 29 July 2024, where lump sum payments were made but with invoices failing to specify which terms' fees the payment related to.

Connected person

The legislation will ensure that private schools are not able to contract out certain supplies to "connected persons" who are themselves eligible bodies, entitled to exemption.

Provision of education or vocational training by such bodies will be treated as provision by the private school.

This will apply where the private school and connected person are:

- closely bound to each other by financial, economic and organisational links; or
- connected within the meaning of s.1122 CTA 2010 (connected persons);

The same treatment will apply where there are arrangements in place, where the main purpose, or one of the main purposes, is to secure treatment as an exempt educational supply.

State sector unable to meet educational needs

Where a pupil's needs cannot be met in the state sector and they are placed in a private school, standard rate VAT will still apply.

However, where these places are funded by their Local Authority, a devolved government, or a non- departmental public body, the funder will be able to recover the VAT incurred.

Nurseries

The government intends that both standalone nurseries and those attached to a private school will remain exempt.

VAT will become chargeable on children's school fees in the first year of primary school in a private school onwards, often referred to as:

- "reception" in England and Wales;
- "Primary 1" in Scotland; and
- "Year 1" in Northern Ireland.

Sixth form and further education

Education and boarding provided by state schools (including academies) are not affected by the policy change, and so will continue to be exempt from VAT. Such entities will continue to be "eligible bodies".

Education and vocational training provided by further education colleges, which are classified as public sector institutions, will not be subject to VAT.

However, education and vocational training provided either at sixth forms attached to private schools or standalone private sixth form colleges will be subject to VAT.

Private tutors

The VAT treatment where a tutor teaches a subject that is ordinarily taught in schools will remain VAT exempt

Other goods and services "closely related" to education

Boarding services, which are closely related to the provision of private education, will be subject to VAT at 20%.

VAT will need to be charged on any additional supplies of education that they charge a fee for after school hours or during holidays. This will include extra-curricular performing arts classes and sports lessons.

However, other goods and services that are provided by a private school for the direct use of their pupils and which are necessary for delivering their education will remain exempt from VAT.

Any services classed as welfare services, where childcare is provided but with no education, will remain VAT exempt. This will include:

- before/after school childcare;
- childcare-based holiday clubs.

Invited comments

The government has invited comments to ensure that:

- all relevant private schools across the UK care captured;
- the “connected persons” test captures only relevant relationships existing between private schools and third parties

Private schools not currently VAT registered

Such schools must register with HMRC with effect from 1 January 2025 and will be able to do so from 30 October, Budget Day.

HMRC will be publishing further guidance on registering, ahead of the 30 October deadline.

Recovering input VAT

From 1 January 2025, private schools will be able to recover input VAT on their related goods and services.

Where a private school also provides exempt supplies, such as welfare services, it will become a partially exempt business and may need to perform a partial exemption calculation to calculate how much input VAT can be recovered. HMRC will be providing specific guidance for schools on how a partial exemption calculation will need to be performed.

Removal of charitable rates’ relief

Many private schools in England are registered charities and therefore benefit from charitable rates relief.

This means that a minimum of 80% relief is available against business rates, with Local Authority’s able to provide a further 20% relief at their discretion.

This relief is being withdrawn for private schools. However, the government has acknowledged that some pupils have special educational needs that can only be met in a private school and is considering how to address this issue.

This change will be legislated for through a Local Government Finance Bill, to be introduced following the Budget, to take effect from April 2025, subject to Parliamentary process.

https://www.gov.uk/government/publications/vat-on-private-school-fees-removing-the-charitable-rates-relief-for-private-schools

https://www.gov.uk/government/publications/revenue-and-customs-brief-8-2024-removal-of-vat-exemption-for-private-school-fees-and-boarding-fees

Suppressed sales and purchases (Lecture B1455 – 22.57 minutes)

Summary – The taxpayer had suppressed zero rated cash purchases of food, meaning that sales were deliberately understated.

Good Choice 2016 Limited was incorporated on 16 November 2016, operating as a Chinese takeaway until March 2020, when it ceased trading. Throughout this time, Mrs Guo was the sole director of the company.

In November 2019, HMRC began a VAT and corporation tax check and, as part of that check, obtained purchase data from a supplier for the period 4 July 2017 to 26 January 2018. This data showed that the company made purchases using an invoice account as well as a separate cash account, but only the purchases from the invoice account had been recorded in the company's accounts. Mrs Guo stated that purchases made by cash account had been for family use only and had not kept the invoices for those purchases.

HMRC:

- concluded that both zero rated purchases and standard rated sales had been suppressed;
- calculated the revised gross sales figures using the suppression rate for cash purchases derived from the purchase data received from the supplier, applying that rate to the sales declared in the corporation tax accounts, and applying the presumption of continuity;
- issued VAT assessments for the periods 08/19 and 11/19, for £2,970 and £2,773 respectively;
- raised VAT discovery assessments following on from corresponding amendments for corporation tax purposes for the years ended 30 November 2017, 2018, and 2019 totalling £50,000;
- issued VAT and corporation tax related penalties totalling £45,000;
- issued Personal Liability Notices to Mrs Guo, in respect of the penalties issued to the Company.

Both the company and director appealed.

Decision

The First Tier Tribunal found Mrs Guo to be an unreliable witness, who provided inconsistent evidence, and did not accept her defence that:

- she had health issues and her medication created memory problems;
- the cash account was used for her family's private food - £20,000 for a six-month period was clearly excessive.
- HMRC's projected turnover was excessive for a take-away business that had suffered reputational damage due to a problem with rat infestations;

The Tribunal concluded that turnover was not accurately recorded and that HMRC's best judgement figures for suppressed purchases and sales were correct, including the s.455 CTA 2010 charges for the extraction of undeclared, additional profits.

The Tribunal agreed with HMRC that the behaviour was deliberate and so the penalties were upheld.

The appeals were dismissed.

Good Choice 2016 Limited and Mrs Fang Bo Guo v HMRC (TC09214)

Collagen-based drink (Lecture B1455 – 22.57 minutes)

Summary – A collagen drink designed to improve skin condition was not zero rated "food of a kind used for human consumption". It was standard rated.

Bottled Science Limited sold a product called Skinade, described on its website as a 'uniquely formulated drink' that should be used as 'part of your daily skincare regime'. It contained marine collagen with flavourings and preservatives to mask the taste.

In November 2020 the company submitted an error correction notice for overdeclared output tax declared in VAT periods 12/16 - 09/20 inclusive totalling £1.25 million on the basis that Skinade was zero-rated food.

However, in May 2021 HMRC refused the claim on the basis that it was a beauty product, sold in beauty salons and cosmetic clinics rather than to food suppliers. Further, the product had won industry awards.

Decision

The First Tier Tribunal needed to determine whether the drink product was a 'Food of a kind used for human consumption' and so zero within Item 1, Group 1, Schedule 9 VATA 1994.

The First Tier Tribunal considered what a 'broad-minded VAT payer', would consider the drink to be by considering its name, nutritional value, palatability and taste, as well as the application of food safety regulations.

The key factor determining the First Tier Tribunal's decision was the marketing and packaging. The product's appearance was more akin to products found in 'in a chemist's shop rather than a grocer' and was marketed as something to be included as "a part of your daily skincare regime".

In conclusion, the First Tier Tribunal found that a broad-minded VAT payer would have found that 'Skinade was not a food.'

The appeal was dismissed

Bottled Science Limited v HMRC (TC09231)

Mobile phone plan bundles (Lecture B1455 – 22.57 minutes)

Summary – The company was making the single supply of standard rated telecommunication services with VAT accounted for when the consideration was paid and not when actually used. The other services were merely ancillary to the main supply.

Lycamobile UK Limited supplied mobile phone plan bundles that included calls, texts and data to UK customers. These bundles:

- lasted for a specified period, usually 30 days, and at the end of which the unused allowances were lost;
- varied significantly in composition in terms of number of minutes, text and volume of data;
- could include the right to access specified "value added services" by using part of the monthly data and call allowances, including a "sports update "service and "non-EU Roaming Calls " service.

Lycamobile UK Limited argued that no service was being provided to the customer until the whole service had been used on the plan as buying a bundle was like buying a voucher, with no VAT charged until the credit on the voucher was spent. At the time consideration was received, the extent to which the customer would use the services was unclear, as was the nature of the services that would be used and the related VAT treatment of those services. This would only be certain when the customer used the services. If correct, VAT was chargeable on the consideration relating the part of the bundle actually used at the end of each period, and then only to the extent that the services were standard rated supplies.

By contrast, HMRC argued the services were supplied at the time of sale, meaning that the full consideration received for each bundle would be taken into account for VAT purposes when paid. However, it was accepted that there could be an adjustment to the extent that the usage did not involve a standard-rated supply. HMRC issued assessments on this basis, totalling some £51 million for the periods 07/12 to 08/19.

Decision

The First Tier Tribunal rejected the idea that the bundles were vouchers (monetary entitlements for future services), taxable when the credit was used. Instead, the First Tier Tribunal found that the company was making a single supply of telecommunication services taxable when the consideration was received, and not when the services were used.

It did not make a difference if the customer then failed to use those services.

The First Tier Tribunal considered the 1 November 2017 change to the use and enjoyment provisions. Prior to this date, supplies of business-to-consumer telecommunication services were not subject to UK VAT to the extent that they were effectively used and enjoyed outside the EU. The First Tier Tribunal concluded that services prior to this date should have been accounted for based on the full amount of the consideration when it was received, with a subsequent adjustment to reflect any non-EU roaming charges.

Lycamobile UK Limited v HMRC (TC09243)

Fraudulent wholesale drinks business (Lecture B1455 – 22.57 minutes)

Summary – The taxpayer should have known the transactions in these cases were connected to fraud and, more likely than not, actually knew of that connection.

Drinks 4 Less (UK) Limited was a company that traded as an alcohol wholesaler but was liquidated in November 2023.

Anandpreet Singh Powar was the company’s sole director and shareholder and, by his own admission, was responsible for everything done by the company, including all trading activities, from its incorporation until its liquidation.

Before establishing Drinks 4 Less (UK) Limited, Mr Powar had been employed by Great Western Cash and Carry Limited where he learned about the alcohol industry, including which products were "fast moving", and when and what to order from suppliers. He made contacts with both suppliers and customers. Great Western Cash and Carry Limited was subsequently deregistered for VAT by HMRC as a missing trader having been subject to at least one seizure of alcohol and an assessment for undeclared sales.

The company received several visits from HMRC officers at which time the importance of due diligence and of keeping accounting records was discussed and various facts were established.

Typically, the company’s business involved Mr Powar being contacted by telephone or text by suppliers offering a "one-time" deal. If he was then able to find a customer willing to accept the goods, he would respond to the supplier, accepting the goods at the price without negotiation. The goods were either delivered to him at the company's registered office or he would meet the supplier somewhere else, such as a carpark, where goods would be transferred to his van for delivery to customers. He would then deliver the goods on to his customers, usually the same or next day.

HMRC established that there was a distinct lack of commercial documents, such as contracts between the parties to the transactions, other than invoices. Further, the company did not make payment until it had sold the goods and received payment from its customer.

In 2017, HMRC denied a claim by the company for a deduction of input tax relating to 179 transactions during its VAT accounting periods 02/13 to 05/16. The claim was disallowed on the basis that HMRC believed that the transactions were connected to a fraudulent loss of VAT and that the company knew or should have known of that connection. HMRC issued a penalty assessment for £83,019.70, against the company.

As it was considered that the company was likely to become insolvent, HMRC issued a personal liability notice (PLN) against Mr Powar making him personally liable to pay the penalty.

However, having reviewed the calculation of the penalty prior to the hearing, the amount of the PLN was reduced to £74,823.63. This was on the basis that HMRC accepted that it could not establish that 45 of the deal chains could be traced back to a fraudulent loss of tax.

According to the case summary:

> "At the same time as the company was engaged in the transactions which are the subject of this appeal, many of the same parties in those transaction chains were also engaged in a criminal missing trader intra-community VAT fraud which resulted in a VAT loss to HMRC of £34.2 million leading to two criminal trials at Southwark Crown Court. …. These trials resulted in convictions for ten of the individuals concerned with another four being acquitted."

The summary goes on to say:

> "The convicted defendants, part of an organised crime group that established and controlled at least 19 purported United Kingdom alcohol buffer traders, ran a "paperwork factory" manufacturing mainly paper transactions the purpose of which was to clean smuggled alcoholic stock and make it look as though it had been purchased legitimately from the first company in the manufactured supply chain before laundering the proceeds of the diverted alcohol back to a number of overseas entities."

Decision

The First Tier Tribunal stated that there was no single factor that led to its conclusion but it was a number of factors when put together resulted in the Tribunal finding in HMRC's favour.

It seemed to be relatively easy to engage in transactions which seemed to be "too good to be true", which "a legitimate businessperson or trader" would have questioned but which Mr Powar did not. For example:

- The company did not need to source supplies; the supplies found the company;
- Mr Powar was able to find customers whose requirements exactly matched the goods the company sought to sell on;
- The company added no value to the transactions;
- There was no commercial reason for the company's place in the supply chain or reason why the suppliers did not deal directly with the customer themselves;
- There was an absence of any commercial documentation for the transactions other than sales invoices;
- There was no insurance on goods in transit;
- There was a consistent profit margin, irrespective of the goods sold;

- Payment to suppliers was not required until customers had settled up;

- Absence of due diligence despite issues raised in due diligence reports prepared, on his instructions, by a third party.

The First Tier Tribunal confirmed that the transactions had resulted in a fraudulent loss of VAT and that the company knew or should have known of that connection. The invalid claims had been made deliberately by Mr Powar, meaning that 100% of the penalty charged to the company could be transferred to him, as sole director.

The appeal was dismissed.

Anandpreet Singh Powar v HMRC (TC09175)

VAT registration estimator tool **(Lecture B1455 – 22.57 minutes)**

HMRC has launched a new VAT registration estimator tool, which has been developed as a result of feedback from small businesses suggested such a tool would be helpful to show when turnover could require businesses to register for VAT and its effect on profits. The tool allows businesses to input relevant data and experiment with different input and output figures. HMRC does not record these details.

In order to use the tool, businesses are advised to have information about their income and costs, and the VAT rates that apply to them, to hand.

They will be asked to:

- state whether the business is, or will be, based in the UK;

- input the approximate income and costs for the time period to estimate, up to 12 months (this can also be used if a person is considering setting up a new business);

- use the guidance links provided to choose the VAT rate(s) for the income and costs (as an estimated percentage of zero, reduced or standard rated, or VAT exempt, goods and services);

- state if the business would prefer to add VAT to, or absorb VAT into, the current or estimated selling price;

- check the answers and complete the form to review the results, which can be saved and printed.

Neil Warren, independent tax consultant, feels more work and testing needs to be done to improve the usefulness of the tool:

> 'I have just done a walkthrough test based on a builder who has sales of £5,000 a month and then had a one-off good sale in month 12 that involved labour and materials for £60,000, i.e. sales of £115,000 for the year. The tool rightly said: “As the taxable income is more than £90,000 you would need to register for VAT.

The disappointing fact is that it did not ask me questions about my estimated future sales, which would have revealed turnover of £60,000 in the next 12 months, meaning that I am eligible to apply for an exception to being registered.

My other observation is that the entries I made when completing the various boxes kept changing between percentages and actual numbers – I found that confusing. For example, instead of just entering annual exempt rental income of £2,000, I had to enter the percentage of my total income that related to exempt income and then round it up. It worked out at 0.17%, which I rounded to 1%, producing a figure that was not £2,000.'

https://www.gov.uk/guidance/check-what-registering-for-vat-may-mean-for-your-business

Adapted from the article in Taxation 18 July 2024