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Finance Act 2015

The Finance Act 2015 received Royal Assent on 26 March 2015.

Personal Tax

ECHR and double taxation

Summary - The FTT dismissed HMRC's strike out application, on the ground that the taxpayer's claim under the European Convention on Human Rights (ECHR) had a reasonable prospect of success.

Mr Fessal had moved to the 'true and fair' basis of organising profits for tax purposes (FA 1998 s 42). He had overpaid tax for 2006/07, but HMRC had rejected his claim for repayment on the ground that it was out of time (TMA 1970 Sch 1 AB). HMRC also raised discovery assessments in relation to underpayments for 2005/06 and 2007/08. Mr Fessal argued that his claim for repayment should be off set against those assessments.

Decision:

The FTT first observed that, applying established case law (for example, *HMRC v Abdul Noor* [2013] UKUT 71), it had no jurisdiction to review HMRC's refusal to exercise its discretion to allow a claim after the expiration of the time limit.

In response to Mr Fessal's argument that he had a claim under ECHR (Protocol 1 article 1) and the Human Rights Act 1998, the FTT noted that he could only be successful if he had a claim for possession. His claim for repayment fell 'marginally on the wrong side of the line', as it was 'an expectation of the exercise of an administrative discretion' which could not be treated as a property right. Furthermore, the relevant time limits pursued a legitimate aim in a 'reasonably proportionate manner' in any event.

However, Mr Fessal's claim against the discovery assessments was a claim for possession and the FTT considered that it was 'at least arguably disproportionate' for HMRC to collect tax for the 2005/06 period when it had already collected tax on those profits in relation to the 2006/07 year. This was particularly so, given that HMRC had issued the discovery assessments after the 2006/07 year had been closed. This put Mr Fessal in a worse position than a taxpayer who had not filed his return, effectively imposing a 100% penalty for declaring income in the wrong year.

Comments - Cases in which taxpayers successfully argue claims under ECHR are few and far between. This is therefore a very useful reference for any taxpayer or adviser wishing to make such a claim. The pivotal point here was that HMRC had effectively taxed the same profits twice. That said, the FTT also confirmed that ECHR cannot be invoked to force HMRC to exercise its discretion. It also remains to be seen whether the taxpayer will be successful in the substantive appeal.

Ignatius Fessal v HMRC TC4287

Using one's pension for IHT planning? **(Lecture P889 – 9.47 minutes)**

With effect from 6 April 2015, taxpayers over the age of 55 will in theory be able to use their pension funds 'like bank accounts' and withdraw cash to invest or spend as they see fit. This will not make that much difference to better-off individuals (who are able to convert their pension pots into a drawdown policy), but the scrapping of the so-called pension 'death tax' will make tax planning using pensions much more interesting.

A 'death tax' charge of 55% applies in two situations where a lump sum is paid out from a deceased individual's pension fund:

(i) when that person dies at the age of 75 or over, regardless of whether or not someone has withdrawn money from the fund; and

(ii) when that person dies before the age of 75 and had started to take withdrawals from it.

The reference here to withdrawing money covers situations such as the taking of a tax-free lump sum or where the deceased was in income drawdown.

A welcome change is that, from 6 April 2015, the Chancellor has instigated a more generous regime in that:

(i) if a pension saver dies before the age of 75 (whether or not the pension pot has been touched), the inherited funds can pass to beneficiaries completely free of tax; and

(ii) where death occurs at the age of 75 or over, there will no longer be a 55% tax charge – instead, the recipients will merely have to pay income tax on the money withdrawn at their marginal rate.

This could be very attractive. For example, a 40% taxpayer could make a pension contribution of £40,000 – this is the gross amount – which would actually have cost him a net £24,000. If the £40,000 which goes into his fund was unspent at the time of his death, it could pass to his children free of tax (if he dies before the age of 75) or be withdrawn in stages subject to income tax (if he dies at a greater age).

These new pension rules offer an obvious incentive for wealthier workers – particularly if they are nearing retirement – to maximise their pension contributions. Putting spare cash into a person's pension fund could now be more appealing than giving the money away in the hope of avoiding IHT.

The abolition of the 55% charge clears the way for families to use pension plans as a vehicle for passing wealth to the next generation in a tax-efficient manner. Children will have the option of keeping money within a pension fund (on a tax-free basis) for as long as they want, taking an income from it if they themselves retire or alternatively helping their own children (ie. the grandchildren of the pension saver) to fund their school fees or to purchase a house or flat.

Where a pension saver is approaching retirement, it may well be worth borrowing money in order to top up their pension arrangements. If circumstances permit, a 40% taxpaying individual could borrow, say, £80,000 to make a pension contribution for 2014/15 (utilising unused relief for the three previous tax years). If that person already had £140,000 in their pension pot, a net contribution of £80,000 would increase the fund by £100,000 to £240,000 (when basic rate tax relief is taken into account) and the taxpayer could then use the 25% tax-free lump sum (£60,000), together with the higher rate tax relief (£20,000), to repay the bank loan. At no cost to the individual, his pension fund would have risen from £140,000 to £180,000 (ie. £240,000 – £60,000).

These figures of course rely on the Government not reducing the tax relief on money put into pensions. Contributions are currently made from gross income, but for how much longer full income tax relief will last is open to question. At least, no mention was made of any restriction at the time of the last Autumn Statement.

Contributed by Robert Jamieson

Capital Taxes

The new CGT charge for non-UK residents (Lecture P888 – 34.14 minutes)

In his 2013 Autumn Statement, the Chancellor announced that a new CGT charge would be introduced for gains made by non-UK residents disposing of UK residential property. This charge comes into effect on 6 April 2015 and covers gains arising from that date onwards.

As well as non-UK resident individuals, partnerships, trustees and personal representatives, the new regime applies to certain non-UK resident companies who will have to pay CGT rather than a corporation tax charge.

Unlike many other countries which collect tax on gains relating to disposals of residential property located within their jurisdiction, the UK has hitherto not charged CGT on disposals by non-UK residents. This has meant that any gain made by a non-UK resident individual on a UK house or flat was either taxed in his country of residence or, in many cases, not taxed at all. In contrast, UK-resident individuals are subject to CGT on disposals of residential property which is not their primary residence (including houses and flats which they own abroad). Similarly, UK-resident companies have always been subject to corporation tax on gains made on the disposal of any residential property. The Government believe that this should be the case for non-UK residents as well.

Following a period of consultation, draft Finance Bill legislation was published on 10 December 2014 which made it clear that the new rules were being put in place to counter the perceived unfairness of the previous status quo and to bring the UK into line with 'many other countries around the world that charge tax on the basis of where a property is located'.

Looking at the position in more detail, the disposal of UK residential property worth £2,000,000 or less by any non-UK resident does not presently give rise to a CGT liability. Since 6 April 2013, non-natural persons such as companies and corporate partnerships which dispose of UK residential properties for more than £2,000,000 are subject to a special CGT charge introduced at the same time as ATED. The residence status of the property owner is irrelevant. There are a number of exemptions from this ATED-related CGT charge, for example, if the property is rented out on a commercial basis, if it is being redeveloped or if it is held for charitable purposes.

As mentioned above, the new charge only taxes gains arising on or after 6 April 2015. It will apply to residential property used, or suitable for use, as a dwelling. Qualifying properties of any value are caught (ie. there is no de minimis threshold). This includes property being built or converted for residential use, although building land is outside the scope of the charge until actual construction commences. This contrasts with the purchase of 'off-plan' residential property which is treated for these purposes as the purchase of a completed dwelling and which is therefore chargeable.

Certain forms of communal residential property will not be within the ambit of the charge, the main exceptions being boarding schools, army barracks, care homes, nursing homes, hospices, hotels and purpose-built student accommodation. Note, however, that other types of residence such as a portfolio of rental properties or converted family houses for students will be caught.

It was stated above that the CGT charge will apply to 'certain' non-UK resident companies. Broadly speaking, in order for a company to fall within this regime, it must be 'closely-held'. The definition of a 'closely-held' company is one which is under the control of five or fewer shareholders, ie. It is a company which, if it were resident in the UK, would almost certainly be classified as a close company. Non-UK resident companies which are not 'closely-held' are not liable for the charge, even if they dispose of UK residential property. Other parties who fall outside the rules include:

(i) shareholders of property-owning companies;

(ii) pension funds; and

(iii) REITs.

The next question to consider in cases where the property was originally acquired prior to the 6 April 2015 commencement date is: how is the gain to be computed? The detailed rules are set out in a new Sch 4ZZB TCGA 1992. In this context, the default position is that the non-UK resident taxpayer is treated as having rebased the cost of the property to its market value as at 5 April 2015 (Para 5(2) Sch 4ZZB TCGA 1992). The increase in value from that date produces the taxable gain. However, as might be expected, there are alternatives. Para 2 Sch 4ZZB TCGA 1992 allows the taxpayer to make an election for the chargeable gain to be calculated on a time-apportionment basis, taking into account the whole period of ownership (in days). The necessary steps to be taken are specified in Para 8 Sch 4ZZB TCGA 1992. Alternatively, the taxpayer can elect to compute his gain over the whole period of ownership (ie. including the period before 6 April 2015), if that would be preferable. In either case, the election is irrevocable.

Illustration

Jean-Claude is a wealthy Frenchman who has owned a house in Chelsea for a number of years. The property was bought in his name. Jean-Claude visits London on a reasonably regular basis, but, unlike many of his fellow countrymen, he has not given up his residence status in France.

The house was acquired by Jean-Claude on 1 June 2012 for £3,600,000. On 5 April 2015, it was valued at £5,500,000. He sold the property on 1 March 2017 for £7,100,000.

What is his chargeable gain?

The default position is that Jean-Claude is taxable on:

		£
	Sale proceeds	7,100,000
Less:	Value as at 5 April 2015	(5,500,000)
		£1,600,000

If he made an election for straight-line time-apportionment, his gain becomes:

	£
Sale proceeds	7,100,000
Less: Cost	(3,600,000)
	£3,500,000

His time-apportionment fraction (in days) is 695 / 1,734 thus:

695/1,734 x 3,500,000 = £1,402,825

In this case, Jean-Claude should make the election under Para 2(1)(a) Sch 4ZZB TCGA 1992 so that his taxable gain is reduced from £1,600,000 to £1,402,825.

The alternative election, looking at Jean-Claude's whole period of ownership, would not be sensible. In practice, this procedure is only likely to be relevant when there is a loss.

There are special rules for losses which arise on the disposal of residential property. In general, losses are ring-fenced and can only be used to offset gains on similar property. They can be carried forward.

If a property has been used both as a dwelling and for other purposes (ie. there is what the legislation calls 'mixed use'), appropriate apportionment provisions apply.

Aside from the ATED-related CGT charge, the new rules take priority over all other anti-avoidance legislation relating to gains made by offshore companies and trusts. Practitioners were hopeful that, when the non-UK resident CGT arrangements were first mooted, they would replace the ATED-related CGT charge in toto. This has not happened. Two reasons have been given for this decision:

1. Two CGT charges seek to achieve different policy objectives. The ATED-related provisions are there to discourage the enveloping of residential properties within a company, while the non-UK resident rules are intended to produce a level playing field regime for owners of UK residential property interests when they sell up.

2. Rates involved are not the same: ATED-related CGT uses a flat rate of 28%, whereas the recently announced charge utilises existing tax rates for the gains, ie. 18% and 28% for individuals and 20% for companies.

One commentator has remarked in this context:

'The professional bodies are far from convinced that these are valid reasons for retaining ATED-related CGT, given the complexity and compliance costs (which) it is building into the new regime.'

However, it is unlikely that the Government will be persuaded to change tack.

Non-UK resident companies will be eligible for indexation relief and non-UK resident individuals and trusts will be entitled to deduct the annual CGT exemption in arriving at their gains (for 2015/16, this is £11,100 and £5,550 respectively).

A practical problem with imposing a CGT charge on a non-UK resident has always been the difficulty of collecting the tax, especially if the individual or company does not otherwise have to submit a self-assessment return in the UK. It was originally proposed that the lawyer dealing with the transaction for the vendor should deduct a specified percentage of the sale proceeds and use this to settle the eventual liability. However, doubtless as a result of representations from the Law Society, this idea has been dispensed with! Although the legislation dealing with this area has not yet been published, it is understood that there is going to be a 30-day period starting with the date of the disposal, within which the non-UK resident vendor has to notify HMRC of the transaction and make an estimated payment of the tax due – in other words, as with ATED, the taxpayer will have to report and pay at the same time. Obviously, non-UK residents who are already within the self-assessment system will merely have to pay their tax on the normal due date. Amendments to returns will be allowed within 12 months of the appropriate filing date.

The final part of the legislation applies to taxpayers who are UK-resident as well as to those who are non-UK resident. In essence, the main principal private residence relief rules are unaltered and so the ability to nominate a property as an individual's only or main residence remains (it will be recalled that, at one stage, serious consideration was being given to the possibility of abolishing this facility). The reason why some changes are thought to be necessary is because the Government want to ensure that relief cannot be claimed by a non-UK resident who does not occupy his UK property as an only or main residence but who might otherwise be tempted to make the necessary election.

New S222(5A) – (5C) TCGA 1992 provides that a non-UK resident individual may determine which of two or more properties should be regarded as the main residence at the time of his disposal. However, this rule is subject to new Ss222A and 222B TCGA 1992 which treat a property as not having been occupied as a residence for a tax year if:

- it is located in a territory in which the individual is not tax-resident; and
- the individual is not present in the property for at least 90 midnights during the year in question.

Thus a UK individual who owns a holiday home in, say, France is subject to this provision in exactly the same way as a foreigner who has a house or flat in London. Where more than one property is owned in the same jurisdiction, the '90-day' requirement covers all the properties. Interestingly, occupation by one spouse (or civil partner) counts as occupation by the other for this purpose.

Where a non-UK resident individual disposes of a dwelling, any use of the property prior to 6 April 2015 is ignored in determining eligibility for principal private residence relief, unless he otherwise elects and specifies the date from which the property is to be regarded as his only or main residence (see new S223A TCGA 1992).

There are corresponding changes to the trust tax legislation in respect of beneficiaries occupying a property under the terms of the settlement.

The provisions discussed above have effect in relation to disposals made on or after 6 April 2015.

Contributed by Robert Jamieson

Possible IHT business relief restriction **(Lecture P890 – 9.22 minutes)**

It is being suggested that, following the General Election, the next Government may well impose restrictions on one of the most important IHT reliefs.

Business relief (as it has recently been rebranded by HMRC) is available when relevant business property such as shares in an unquoted trading company or an unincorporated business interest passes on a business owner's death. The relief typically eliminates the entire asset value from the charge to tax through the operation of a 100% deduction. Unlike entrepreneurs' relief, there is no upper limit nor is there any territorial restriction, ie. shares in an overseas company which meets the relevant conditions attract exactly the same relief as those of a UK-based company.

The envisaged amendment is that business relief would only be given if the asset in question was held for a specified number of years after death by the legatee to whom it was bequeathed. At present, there is nothing to stop a testator leaving family company shares (which qualify for 100% business relief) to his son who promptly sells the shares and pockets the cash. There is no IHT charge on the shares and – probably – no CGT liability either. In future, such a transaction could mean that business relief is clawed back in the event of a disposal within the prohibited time limit.

This would effectively be an extension of the additional conditions, introduced in 1986 (some 10 years after business relief first came into being), which must be satisfied before a taxpayer can be sure of relief in connection with a *lifetime* transfer. Ss113A and 113B IHTA 1984 cover two scenarios:

(i) where a potentially exempt transfer (PET) of relevant business property becomes chargeable because of death within seven years; and

(ii) where additional IHT becomes due on a chargeable lifetime transfer for the same reason as above.

The main condition here is that, at the date of the transferor's (or transferee's, if he has predeceased the transferor) death, the property must either still be owned by the transferee or have been 'replaced' with other qualifying property – there are detailed rules about what constitutes a permitted replacement. For example, if a father gives his son a family company shareholding but dies five years later, the son must still own the shares at the date of his father's death if the failed PET is to attract business relief.

One's first thought about this latest possibility is that it will give rise to some difficult succession issues. Where the proprietors of a business do not want, say, the children of a deceased shareholder or partner to join the business because they would be unable to make a useful contribution due to their lack of experience, the fact that the new owners would have to retain the business property for a set period before disposing of it is bound to cause problems. The whole issue needs to be properly thought through before any decision is taken about changing the legislation.

Contributed by Robert Jamieson

Administration

Permission to lodge late appeal

Summary - The FTT granted permission to lodge a nearly five year late appeal.

The taxpayer had applied for permission to lodge a late appeal. HMRC had applied to strike out the appeal on the basis that the appeal was made four years and ten months out of time (The Tribunal Procedure (FTT) (Tax Chamber) Rules, SI 2009/273, rule 8).

In February 2009, the club's accountants had written to the club recommending the making of protective claims, pending the CJEU's decision in *Bridport and West Dorset Golf Club* (C-495/12). The club had duly instructed its accountants to submit a claim. The claim had been rejected by HMRC in July 2009 in an incorrectly addressed letter which the club claimed never to have received. Following the decision in *Bridport* in favour of the taxpayer, the club had lodged a repayment claim in 2014, which HMRC had rejected as out of time. HMRC alleged that it had no record of any mail being returned as undelivered and that therefore the July 2009 letter must have been delivered.

Decision:

Having established that, at the time of the July 2009 letter, HMRC had been inundated with *Fleming* claims, while the club was a small organisation with a 'hands on' management, the FTT concluded that HMRC's decision letter had not been received by the club.

The FTT also accepted that the club had been entitled to simply wait for the outcome of the litigation in *Bridport*. As for its accountants, once they had ensured that their client's claim had been received by HMRC, they had had no reason to be in contact with HMRC. This therefore amounted to a reasonable excuse.

Finally, the FTT noted that, although the delay had been very long, the taxpayer had acted promptly on receipt of the decision in 2014. Furthermore, to 'shut out' the taxpayer from effective litigation would cause it substantial prejudice; whereas, even if the appeal had been lodged on time, HMRC would not have reached any certainty until the outcome of the *Bridport* litigation.

Comments - The application for permission to appeal out of time related to an appeal which was almost five years late. The decision of the FTT suggests that, where there are good reasons for the delay, permission to appeal out of time should always be sought.

North Berwick Golf Club v HMRC [2015] UKFTT 82

Process defects and appeals to the FTT

Summary - The UT held that the FTT had no jurisdiction to hear appeals based on a process defect.

HMRC had refused to exercise its discretion in favour of the taxpayer and it had upheld its decision as part of the review process. The review decision had suffered from a process defect. The issue was the jurisdiction of the FTT.

Decision:

The UT noted that the starting point must be that an assessment is valid, unless and until it is shown that the taxpayer is entitled to have HMRC's discretion exercised in his favour. This can be done by establishing a merits defect, but not a process defect.

Here, the process had been defective. Therefore, HMRC should be allowed to reconsider the exercise of its discretion, against which the taxpayer could appeal on the basis of a merits defect. If HMRC chose to 'sit on [its] hands and do nothing', the taxpayer could appeal on the basis of a merits defect, claiming that no reasonable body of Commissioners could refuse to exercise its discretion in his favour.

It followed that the FTT should not have allowed the company's appeal against the assessment on the basis of a process defect.

The UT added that, in circumstances where the review decision was flawed because of a process defect, the original decision must be treated as upheld, with the consequence that the taxpayer could appeal against it on a merits basis. The appeal would then be an appeal against an assessment. The mere fact that HMRC would have failed to make a decision on review would not mean that the appeal must be allowed. However, when reaching its decision, the FTT would have access to information made available to HMRC at the time of the review.

The appeal was therefore remitted to the FTT for it to reach a decision in accordance with the principles set out by the UT.

Comments - The case clarifies the lines between: (1) the two jurisdictions of the FTT: an appellate jurisdiction to hear appeals against assessments; and a supervisory jurisdiction to examine whether HMRC's jurisdiction has been properly exercised; and (2) decisions flawed on merits, which the taxpayer can appeal; and those flawed because of process, which do not carry a direct right of appeal.

HMRC v G B Housley [2015] UKUT 71

Witness summons and non-resident witnesses

Summary - The UT found that the FTT had had no jurisdiction to issue witness summonses.

The FTT had set aside two witness summonses. The main issue was whether the FTT had jurisdiction to issue summonses to witnesses who did not reside in the UK and did not have a place of business there.

Decision:

The UT first observed that there was a significant difference of approach between the civil procedure rules (CPR), which focused on the service of documents, and the Tax Chamber Rules (TCR), which are concerned with the sending, delivery and receipt of documents. However, it noted that,

applying *Phipson on Evidence*, under both the CPR and the TPR, the English courts will not compel a non-party abroad to provide documentary or oral evidence — unless the prospective witness is served when he visits the jurisdiction.

The UT added that an applicant for a witness summons must not mislead the FTT. Here the FTT had been misled by the (ill-founded) assertion that the witnesses were not prepared to give evidence. Without this assertion, the FTT would not have issued the summonses. The summonses should therefore not be allowed to stand, with the potential for delivery by hand to the witnesses when they come to England.

Comments - The case is a reminder of the importance of 'full and frank disclosure' when making an application. Without it, any decision by the FTT can be set aside.

Clavis Liberty Fund v HMRC [2015] UKUT 72

Strikeout

Summary –Tribunal reinstated the appeal when it realised the impact on the taxpayer of not doing so.

A company appealed against PAYE and National Insurance determinations raised in respect of shares transferred to employees out of an employee benefit trust. HMRC applied for the appeals to be struck out on the ground that the Court of Appeal decision in *CRC v PA Holdings Ltd* [2012] STC 582 applied.

The company did not attend the First-tier Tribunal hearing, so Judge Berner struck out the appeal, saying:

"It is not open to an appellant simply to take no part in the proceedings, and to expect the tribunal to undertake its own analysis. That, in effect, is expecting the tribunal to stand in the shoes of the appellant and to make out a case for the appellant before making a determination as between that case and the case put forward by the respondents."

The company applied for its appeal to be reinstated.

Decision:

In the subsequent hearing at the First-tier Tribunal, the company explained that it had not attended the earlier hearing because of "a lack of funds" and had not realised that the tribunal would not conduct the appeal without further input from the taxpayer.

Judge Sinfield noted that "the amounts of tax and National Insurance at stake are substantial", so the financial consequences if the strike out were not set aside would be serious for the taxpayer. He said the company had acted quickly to reinstate the appeal after the strikeout. The company's "declared intention not to take part in the appeal was not due to deliberate disregard of its responsibilities but to the difficult financial situation in which it found itself".

The application to set aside the strikeout was granted.

Comments – This case demonstrates the importance of procedure in the conduct of an appeal and the importance of ascertaining what procedure must be followed. This was particularly true where there are substantial sums of tax and NICs at stake.

Jumbogate Ltd v HMRC TC4271

Allegations of dishonesty and conduct of cases

Summary - The UT found that HMRC could allege dishonesty when questioning witnesses, even though those allegations had not been made in its statement of case. The taxpayers were limited liability partnerships (LLPs) and the main substantive issue was whether the LLPs had carried on a trade with a view to profit.

This was an appeal from a case management decision by the FTT. The burden of proof lay on the LLPs and a key document to their case was an information memorandum. HMRC's line of questioning in relation to this document suggested (or implied, at least) that it was alleging dishonesty. The LLPs' grounds of appeal were therefore that the FTT had 'erred in permitting unpleaded allegations to be made' and that the hearing should have been adjourned.

Decision:

The UT, agreeing with the FTT, found that the FTT could not have made findings of dishonesty, as the allegations had not been put 'fairly and squarely' to the witnesses and they had not been given an opportunity to rebut them. That said, it was not too late for HMRC to make those allegations — despite the fact that they were absent from its statement of case. A party that merely wishes to test, and if possible discredit, evidence to be relied upon by its opponent, does not have to give notice of its intention to do so.

The UT concluded that HMRC was under no obligation to plead a positive case of dishonesty and so no adjournment was required on that basis.

However, the UT did set aside the part of the FTT's decision which allowed the LLPs to adduce additional evidence as soon as an allegation of dishonesty would be put to them, as this would effectively give them 'carte blanche' to adduce any new evidence.

Comments - Although the UT confirmed the FTT's finding that HMRC could make an allegation of dishonesty without having included it in its statement of case, it directed that HMRC set out those allegations in a written document. Similarly, although the UT quashed the FTT's direction that the LLPs be allowed to adduce additional evidence when presented with an allegation of dishonesty, it did allow the LLPs to present new evidence strictly in response to these allegations. Understanding these nuances will be key to the success of any tax litigator.

Ingenious Games v HMRC [2015] UKUT 0105

The scope of HMRC's duty of confidentiality

Summary - The Court of Appeal found that HMRC had not breached any duty of confidentiality when discussing film schemes and their promoters with journalists.

Ingenious and its subsidiaries promoted film investment tax avoidance schemes.

During an 'off the record' meeting with journalists from *The Times*, Mr Hartnett, then the Permanent Secretary for Tax, had discussed the affairs of Ingenious. *The Times* had then published extracts of the meeting, claiming that 'off the record' only meant that the source of the quotations could not be named.

Ingenious claimed that HMRC had breached the Commissioners for Revenue and Customs Act (CRCA) 2005 s 18 (duty of confidentiality), the European Convention on Human Rights (ECHR) art 8 (right to privacy) and art 1 of Protocol 1 of the European Convention on Human Rights (A1P1) (right to peaceful enjoyment of possession).

Decision:

The Court of Appeal pointed out that a wide interpretation of HMRC's function as that of raising tax revenue was appropriate when applying s 18. A factually correct disclosure not involving the private affairs of a taxpayer — and which had the effect of reducing the effect of tax avoidance schemes which HMRC genuinely considered ineffective — was a disclosure HMRC should be free to make. The court also rejected the contention that Mr Hartnett could have expressed HMRC's concerns about film schemes without implicating Ingenious, which was known to be the main promoter of such schemes.

In addition, the court found no evidence of damage to reputation, in circumstances where Ingenious' involvement in such schemes was known. Finally, in relation to A1P1, the court found that Ingenious' claim that *The Times'* revelations would lead to a loss of customers — i.e. loss of taxpayers investing in the schemes — did not come within the scope of A1P1. It was no more than a claim for loss of future income, without any expropriation by the state, and it was in the public interest for HMRC to express its view of such schemes.

Comments - The case confirms that HMRC can disclose information which it believes will assist it in its function of collector of taxes. The 'naming and shaming' provisions introduced by FA 2009 now also allow HMRC to disclose the identity of defaulting taxpayers and dishonest tax agents**.**

Ingenious Media Holdings and another v HMRC [2015] EWCA Civ 173

Failed challenge of a PAYE determination

Summary - The FTT found that a PAYE determination, issued by HMRC following an error by the employer, must stand.

Poole Leisure ran a successful bistro café bar. Mrs Ball had provided payroll services. Following a mistake by Mrs Ball, Poole Leisure had failed to deduct the correct amount of PAYE for one of its employees.

Under the Income Tax (PAYE) Regulations, SI 2003/2682, reg 72, HMRC has a discretion to direct that an employer is not liable to pay the 'excess' (i.e. the additional amount of PAYE due). This applies, in particular, when the failure to deduct the excess 'was due to an error made in good faith'.

Decision:

The FTT pointed out that HMRC had not made a direction under reg 72(5), before the issue of a notice of determination under reg 80. Therefore, the only basis on which a direction could be regarded as having been sought would have been under a request by Poole Leisure under reg 72A. Such a request would have set out (inter alia) how reasonable care had been taken and how the error had occurred. In correspondence with HMRC, Mrs Ball had set out the sequence of events that had led to the error; but this did not amount to an account of how Poole Leisure had taken reasonable care. Furthermore, Mrs Ball had also not stated the amount at stake. Consequently, no valid request had been made to HMRC.

The only remaining question was whether the reg 80 determination should stand. For these purposes, the determination was treated as an assessment; and so the burden of proof lay on Poole Leisure to satisfy the FTT that the determination was incorrect. No evidence had been provided and, therefore, the determination must stand.

Finally, the FTT had no jurisdiction to decide that the unpaid PAYE should be paid by the employee rather than by Poole Leisure.

Comments - This case confirms that reg 72A of the PAYE regulations sets out very strict formal requirements and is therefore unlikely to be complied with in a mere exchange of letters between the taxpayer and HMRC.

Poole Leisure v HMRC [2015] UKFTT 109

Tax-geared penalties

Summary - The UT imposed nearly 100% of the tax due as a penalty.

Mr Tager had submitted his tax returns for the years 2008/09, 2009/10 and 2010/11 during the course of April 2012. He had then failed to comply with information notices relating to those returns. In the meantime, Mr Tager's father had died and Mr Tager had become liable to IHT. Again, information notices were issued in relation to the IHT return and penalties for non-compliance were imposed. HMRC had applied for permission from the UT to impose a tax-related penalty (FA 2008 Sch 36 para 50).

At a direction hearing in February 2014, the UT had decided to give Mr Tager one last chance. Mr Tager had been given a few more weeks to comply and had given an undertaking to do so to the UT.

Mr Tager had complied partially with the income tax notices and, until 7 October, had not complied at all with the IHT notices. The UT observed that the fact that he had failed to hire tax advisers when faced with longstanding enquiries undermined his claims that he wished to be transparent and to pay his tax.

Decision:

The UT also noted that the imposition of a para 50 penalty was a last resort and was to be used in circumstances where it was likely that tax due would escape assessment. However, it was not a proxy for an assessment, as the imposition of a para 50 penalty did not preclude a future assessment — and last minute compliance could not avoid the penalty (although it might reduce it). A para 50 penalty was therefore punitive in nature.

The UT therefore imposed nearly 100% of the income tax due as a penalty (£75,000 out of £80,000), on the basis that Mr Tager had done 'too little too late'; and 100% of the IHT due (over £1m). The UT also invited submissions on the appropriate penalty to be imposed for Mr Tager's non-compliance with his undertaking to the UT.

Comments - This was the first application of this kind by HMRC since the enactment of Sch 36. The UT wrestled with the notion of a penalty geared to an unknown amount of tax and accepted HMRC's estimates. Having confirmed the punitive nature of the penalty, it showed no mercy to a taxpayer who 'commanded little sympathy' and who was a QC.

HMRC v Romie Tager [2015] UT 40

TMA 1970 s 34 and self-assessment

Summary - The UT found that the time limit in TMA 1970 s 34(1) did not apply to self-assessment.

Mr Higgs had made payments on account (based on the previous year's liability) which had turned out to be too high, so that a repayment by HMRC may be due. HMRC, however, resisted the claim for repayment, on the ground that Mr Higgs' return had been received after the expiry of the four year time limit (TMA 1970 s 34(1)).

Mr Higgs contended that s 34(1) only applied to assessments by HMRC and not to self-assessment returns; and that, in the alternative, HMRC had a discretion to extend the deadline which it must exercise under art 1 of Protocol 1 to the European Convention of Human Rights (ECHR A1P1).

Decision:

The UT referred to *Morris* [2007] EWHC 1181, which held that s 34 had no application to a self-assessment, and to *Whiteman on Income Tax*, which confirmed this position. It also noted that this interpretation was consistent with the natural reading of the section as a whole (including s 34(2), which cannot apply to self-assessment) and with the placing of the section alongside other provisions which relate exclusively to assessments by HMRC. Finally, applying s 34 to self-assessment would make it inconsistent with other provisions that contain different time limits, such as ss 8 and 28C.

The UT also found that, in the event that it was wrong and s 34 did apply to self-assessment, the matter should be remitted to HMRC for it to give full and proper consideration as to whether it should exercise its discretion; and, in particular, as to whether the refusal to extend the time limit would amount to 'a disproportionate interference' with Mr Higgs' rights under ECHR A1P1.

Comments - This case is particularly helpful to taxpayers. Not only does it confirm that the s 34 time limit does not apply to self-assessment, but it also accepts that ECHR A1P1 applies to cases where HMRC refuses to exercise its discretion to extend the time limit for a repayment claim.

The Queen (on the application of Andrew Michael Higgs) v HMRC [2015] UKUT 92

Deadline dates for April 2015

1 April 2015

- Payment of corporation tax liabilities for SMEs account period ended 30 June 2014 where payment not made by instalments.
- Reduced main rate of corporation tax (20%). Small profits rate abolished except for ring fence profits.
- Change to emission thresholds for business cars (zero rate ends).
- Application to defer Class 2 or 4 NICs for 2014/15 or claim exception for 2015/16.
- Multiple contractors to advise HMRC that they wish to be treated as a single contractor for 2015/16.

5 April 2015

- 2014/15 tax year end.
- Ensure personal allowances, exemptions and tax bands are efficiently used.
- Deadline to pay previously unpaid Class 3 NICs for 2008/09.

6 April 2015

- Start of 2015/16 tax year. Ensure payroll and other systems are updated.
- Personal allowances increased to £10,600.

7 April 2015

- Electronic filing and payment of VAT liability for quarter ended 28 February 2015.

14 April 2015

- Forms CT61 for quarter ended 31 March 2015.
- Quarterly CT instalment for large companies (depending on accounting year end).
- EC sales list deadline for monthly paper return.

19 April 2015

- Payment of PAYE/CIS liabilities for month ended 5 April 2015 if not paying electronically.
- Payment of PAYE liability for quarter to 5 April 2015 if average monthly liability is less than £1,500.
- File monthly CIS return.

21 April 2015

- File online monthly EC sales list.
- Submit supplementary Intrastat declarations for March 2015.

22 April 2015

- PAYE liabilities should have cleared HMRC's bank account.

30 April 2015

- Companies House should have received accounts of private companies with 31 July 2014 year end and plcs with 31 October 2014 year end.
- HMRC should have received CTSA returns for companies with periods ended 30 April 2014.

HMRC News

The government has further extended Stage 1 of its review of the tax rules on employees' travel and subsistence expenses until 1 May 2016. (The original closing date of 23 October 2014 was extended to 31 January 2015.) Stage 2 involving a working group to produce a new set of principles will not now report by Budget 2015 as first intended. This review complements HMRC's consultations on expenses and benefits and the Treasury's broader call for evidence on remuneration published on 18 June 2014.

Contents

1. Stage 1 – July 2014 to October 2014

2. Stage 2 – winter 2014 to spring 2015

In response to the Office of Tax Simplification's (OTS) January 2014 report on the tax treatment of employee benefits and expenses Review of employee benefits and expenses: second report, the government announced in Budget 2014 that it intended to review the rules underlying the taxation of travel and subsistence expenses. On 31 July 2014 the government launched the first stage of that review. It sits alongside the consultations on expenses and benefits and the broader call for evidence on remuneration launched on 18 June, both of which are intended to complement this work.

Background

In their report, the OTS made a range of recommendations for how the tax treatment of travel and subsistence expenses could be simplified or improved. The OTS's extensive research highlighted elements of the current regime which are a cause of error, misunderstanding and concern for employers. In addition to the range of recommendations for changes to the current rules, the OTS proposed that the whole system of travel expenses be reviewed against changing working patterns.

The government believes that these problems are symptomatic of more fundamental issues in the tax rules on travel and subsistence expenses. The travel and subsistence rules have failed to keep pace with changes in working practices. Since the rules were last updated there have been significant changes in the way the workforce operates, including the growth in the temporary labour market and an increase in the number of employees who work at home, neither of which is properly catered for in the current system. Concerns have also been raised with the government that some of the rules drive tax planning and abusive behaviour and are distorting the labour market and working practices. Given the rate of change in working practices the government intends to start from first principles and produce a new set of rules that will work with modern day practices.

The government intends for any new set of rules to be simpler for both employees and employers to understand and use; to reflect rather than drive commercial decisions; and also that it will be responsive to 21st century working patterns. The government does not intend that any new system would provide tax relief for private travel or ordinary commuting but, within those constraints, intends to engage in an open and transparent process of consultation to ultimately produce a new set of rules.

Given the scope of the review and the complexity of devising a new set of rules, the government expects that this will be a longer term piece of work, and therefore has no plan to legislate for these new rules in the remainder of the current parliament.

The government intends to conduct the consultation in stages, the first two of which are outlined below:

1. Stage 1 – July 2014 to October 2014

In the first stage of the consultation the government intends to improve its understanding of the commercial realities of travel and subsistence payments. Amongst other issues, the government intends to explore the circumstances in which employers pay travel and subsistence expenses (whether tax relievable or not); how tax influences these decisions; and the other factors which influence commercial decision making in this area.

In this stage the government also intends to discuss the framework within which it will develop any new principles to underlying rules on travel and subsistence expenses. At this stage of the review the government is not considering the detail of possible rules themselves but instead this framework would provide parameters within which a new system of travel and subsistence rules could be designed. In particular the government wants to discuss what sort of payments should qualify for tax relief, who they should need to be paid by, to whom and in what manner – and whether tax relief for subsistence payments need be tied to the rules for travel.

Please note that the government is now considering the findings from the first stage of this review. Further opportunities to contribute to the review will be announced in due course.

2. Stage 2 – winter 2014 to spring 2015

In the second stage of the review the government intends to establish a working group to assist in producing a new set of principles for the travel and subsistence tax regime. These principles will be based upon the government's findings from the first stage of the review.

Stage 1 work continues, therefore the government will not be reporting on stage 2 of the review at Budget 2015. However, should the government decide to proceed with reforming the rules, any proposals will undergo a full consultation so that any interested parties can contribute their views for consideration. Please note that details of this consultation process will be published in due course.

Business Taxation

Failed scheme and negligence

Summary - The FTT found that a company, which had implemented a scheme later found to be ineffective, had not been negligent.

The controlling director, S, of the taxpayer wanted the company to sell an investment property. Having discovered that the corporation tax on the disposal, along with the tax on distributing the proceeds to himself, would be 68% of the gain, he sought advice on how to mitigate the charges.

His adviser, Montpelier, suggested a capital redemption policy scheme that would create an allowable capital loss that the company could realise and offset against the gain on the property. A similar scheme was marketed by other firms, including KPMG and Grant Thornton. The company went ahead with the scheme and completed its tax return showing the gain against which the loss was to be offset.

The scheme was later found by the Special Commissioners, the High Court and the Court of Appeal to fail. The taxpayer accepted the result, withdrew the loss and paid the tax on the gain.

HMRC told the director that he and the other participants in the Montpelier scheme were to be charged penalties on the basis that it would have also failed because “nothing had happened”. The taxpayers were negligent because they should have sought further advice, challenged the way the scheme was put in place, or had submitted wrong tax returns. No penalties were sought from clients of KPMG or Grant Thornton. The penalty charged was 25% of the tax on the gain. S offered to settle at 10%, objecting in principle to the suggestion that he or his company had been negligent. HMRC countered with a 15% penalty. The taxpayer appealed.

Decision:

The First-tier Tribunal did not agree that nothing had happened. The steps of the scheme were carried out. Further, although the scheme was “manifestly artificial”, it was no more so than the KPMG and Grant Thornton schemes, the participants of which had not been challenged as negligent by HMRC.

On HMRC's accusation that the company had been negligent in submitting its tax return, the tribunal said S had examined the scheme, read counsel's opinion and understood the proposition. His experience of Montpelier had been “highly satisfactory” so he had no reason to seek another opinion. The judge concluded S had not been negligent in submitting the company's return. He said: “In the way that no penalties were exacted from participants in schemes promoted by KPMG, Grant Thornton and others, this illustrates that there should be no penalty for honestly implementing a legal scheme, with no element of evasion, and with full provision of the DOTAS number.” The taxpayer's appeal was allowed.

Comments - The FTT declared 'there should be no penalty for honestly implementing a legal scheme, with no element of evasion, and with full provision of the DOTAS number'. The case is a reminder that HMRC cannot circumvent this by claiming negligent implementation without substantiating its case.

Herefordshire Property Company v HMRC TC4286

Exit charges and freedom of Establishment

Summary - The advocate general (AG) opined that an exit charge complied with EU law.

A German limited partnership had transferred intellectual property rights from its German permanent establishment to its Dutch permanent establishment. This had triggered a tax liability payable in instalments over a ten year period. The issue was whether this charge infringed the principle of freedom of establishment.

Decision:

The AG noted that the CJEU accepts that, on a transfer of assets to another member state, the originating member state may tax unrealised capital gains generated in its territory, even though this creates a restriction on the freedom of establishment. This is based on the general recognition of the member state's right to exercise its power of taxation in relation to activities carried on in its territory.

The AG also rejected the Commission's view that the fact that the limited partnership remained in Germany rendered unnecessary the establishment of the amount of unrealised capital gains accrued in Germany prior to the transfer of the assets. The fact that the partnership remained in Germany only affected the issue of recovery.

Finally, the AG stressed that the CJEU accepts events other than actual realisation as triggering the obligation to pay an exit tax. It also suggested that the ten year recovery period was proportionate.

Comments - This opinion confirms the legality of exit charges under EU law. It remains to be seen whether it will be followed by the CJEU, particularly since it differs from the view of the Commission.

Verder LabTec GmbH & Co.KG v Finanzamt Hilden (C-567/13)

Ineffective scheme relating to employee benefits

Summary - The UT found that a scheme, devised to accelerate the availability of deductions on the provision of employee benefits, had failed.

Under FA 2003 Sch 24, an employer is not entitled to a deduction for the cost of providing a benefit to an employee, unless such benefit gives rise to a charge to income tax for the employee within nine months of the accounting period. Scotts Atlantic had implemented a scheme — which involved a movement of value on the granting of an option without 'a payment of money or transfer of assets' — to circumvent the restriction.

Decision:

The UT accepted that the deduction claimed was in respect of the amount of the value shifting. However, the value shifting had occurred only as one step in a larger arrangement, which included the making of a contribution to an employee benefit scheme.

'Where a set of pre-planned actions are undertaken which together result in a cost to the company, the cost or the deduction is properly regarded … as being in respect of those actions as a whole, and those actions constituted the making of an employee benefit contribution.'

The UT also accepted the FTT's finding that one of the purposes of the contributions was to obtain a corporation tax deduction. This purpose was not an 'incidental consequence of the expense'; therefore, the expense had not been incurred 'wholly and exclusively for the purpose of the trade' and was therefore not deductible (ICTA 1988 s 74).

Comments - This case is a typical example of the application of a 'realistic approach' by the tax tribunals to defeat a scheme. It is also a reminder that an incidental tax motive will not preclude a deduction; this will only be the case if the tax motive confers a dual purpose upon the transaction.

Andrew Hubbard of Baker Tilly said: “The EBT saga continues. This decision is important because of its wide interpretation of the phrase 'employee benefit contribution' in FA 2003, Sch 24. The tribunal looked at the whole of the arrangement under which value passed from the company into the EBT rather than, as had been done by the First-tier Tribunal, dissecting the arrangements into its component parts. Given that the Upper Tribunal also found against the company on wholly and exclusively grounds, HMRC are likely to step up their challenge to corporation tax deductions for contributions where no PAYEable income has been provided out of the EBT.”

Scotts Atlantic Management v HMRC [2015] UKUT 66

Effective scheme relating to employee benefits

Summary - The UT found that a scheme, devised to avoid income tax and NIC deductions on payments to employees, was effective.

Tower and Total had implemented a scheme to pay bonuses to employees without attracting income tax and NIC deductions. This was to be achieved by awarding the employees shares in specially formed subsidiaries, and thus taking advantage of ITEPA 2007 Part 7, which contains special rules for the acquisition of shares in connection with employment. The issue was whether, in the light of the *Ramsay* principle and 'taking a realistic view of the facts', the employees should be regarded as having acquired money rather than shares.

Decision:

The UT found that the employees had been awarded shares, not money, for the following reasons (inter alia):

- They were shareholders for company law purposes and were registered as such.
- The words 'shares in any body corporate' (ITEPA 2007 s 420) are not easily susceptible to a non-technical reading.

- Applying *Mayes* [2011] EWCA Civ 407*,* the fact that the scheme had no commercial purpose could not necessarily preclude the application of ITEPA 2007 Part 7.
- s 420 definition of 'securities' was broad enough to include shares in owner-managed companies.

Comments - The case is a reminder of the limits of the *Ramsay* principle, which have led to the adoption of the general anti-abuse rule (GAAR). The fact that a transaction is devoid of commercial purpose does not always justify a recharacterisation under the *Ramsay* principle. The UT accepted that the relevant provisions were flawed, but that this could not be overcome by 'unnaturally' narrowing their scope.

Tower Radio and Total Property Support Services v HMRC [2015] UKUT 60

Poor investment

Summary – The Tribunal determined that the interest in a company was an investment in nature

The taxpayer was a special purpose company formed to hold the Terrace Hill group's 50% interest in a development of an office property in Mayfair, London. The construction was completed in 2003 and the property was let to several tenants before being sold in 2005.

The company claimed that its profits on the sale were capital profits covered by losses eligible for surrender by group relief. The chairman of the group explained that the business retained properties where good rental growth was anticipated to maintain a steady income. The aim had been to keep the development in question but, when it was sold, the offer had been considered too good to turn down, particularly given that rental growth was looking less attractive than originally envisaged.

HMRC rejected the claim, saying the company had held its interest in the property as a trading asset rather than as an investment and had always intended to sell it once it was fully let. They also imposed a penalty on the basis that the company had submitted an incorrect return.

Decision:

The First-tier Tribunal said the decision was finely balanced relating to whether the taxpayer's motivation in relation to the development was of a trading or investment nature.

The judge said it was clear from the evidence that the group had a strategy of “building up retained properties with potential for rental growth and to produce a steady stream of rental income” and its accounting treatment supported this. However, “disappointing letting experience” in relation to the property in question resulting in lower rents and tenants of a “lower standing” than anticipated had led to the change of strategy and justified the decision to sell.

The judge concluded that the development was acquired and held as an investment.

The taxpayer's appeal was allowed.

Comments – One of the oldest questions in taxation is the one distinguishing a trade from an investment. This case is another example to add to the long list in which the judges ultimately found in favour of Terrace Hill (Berkeley) Ltd by agreeing that the property had been acquired as an investment,

Terrace Hill (Berkeley) Ltd v HMRC TC4282

Swimming pool allowances

Summary – The Tribunal concluded that the conservatory housing a swimming pool was excluded from capital allowances

The taxpayer operated a retirement home. It bought the property in September 2004 and, in the grounds, was a swimming pool housed by a conservatory. The company claimed capital allowances on the pool and conservatory.

Questions arose as to whether the conservatory was plant for capital allowances purposes, the appropriate method of apportionment and the allowable cost of the pool.

Decision:

The First-tier Tribunal noted that the conservatory was a fixed structure used to provide shelter and warmth to the residents who used the pool. However, it did not fall within the definition of an industrial building because no qualifying trade was carried on. It did not add thermal insulation to an existing building so could not satisfy CAA 2001, s 28.

The tribunal concluded that the conservatory was excluded from capital allowances by s 21 or s 22.

On apportionment, the tribunal preferred HMRC's approach. The taxpayer argued that "where the value of assets can be separately identified for capital allowances purposes, an apportionment formula is not necessary". This would take replacement value of plant, replacement value of pool and structure, and agreed value of land and leave the building value as the balancing figure. The tribunal said this was "flawed" because it did "not identify the value of all assets purchased on the same basis".

HMRC's formula used replacement value as a starting point but, the tribunal noted, did so "for all the assets being purchased including the building". The judge said this approach had "been used over many years in this context" and gave a just and reasonable apportionment in this case.

However, to apply this formula it was necessary to identify the replacement cost of the pool. The taxpayer and HMRC did not agree this cost, so the judge directed that they should have 42 days to reach agreement and return to the tribunal for a further hearing. That apart, the taxpayer's appeal was dismissed.

Comments - Ray Chidell of Claritax Books said the decision was of "little interest in relation to the treatment of the conservatory", but noted that "its main value lies in the fact that a modern tribunal has reaffirmed that the standard apportionment formula, even though it has no statutory basis, fulfils the statutory requirement to make a just and reasonable apportionment".

Bowerswood House Retirement Home Ltd v HMRC TC4299

Tax avoidance scheme worked

Summary - The FTT found that a tax avoidance scheme relying on the group relief rules was effective.

Gemsupa and Wilmslow had implemented a scheme to avoid corporation tax on chargeable gains realised on the disposal of real estate. The transactions were structured so that the disposals to a company which was part of the British Land group had taken place when the vendors were also members of that group. Companies (P1 and P2) owned by the purchaser had subscribed for shares in the two vendors, the real estate had been sold and the purchaser had exercised its put option and sold P1 and P2 to companies of the vendors' group. The vendors contended that, under TCGA 1992 s 171, the disposals had taken place on a 'no gain, no loss basis'.

Decision:

Referring inter alia to *Ramsay* (1981) 54 TC 101, the FTT observed that it must identify the purpose of s 171 and decide whether the transaction fell within its scope, 'taking a realistic view of the facts'. However, applying *Bupa Insurance* [2014] UKUT 262 and *Sainsbury* [1991] STC 318, the FTT found that it could not 'say that group relationships intended to be limited in time and established only for the purposes of obtaining the relief, were outside the purpose of the provisions'. Furthermore, referring to *Astall* [2009] EWCA Civ 1010, the FTT thought that even though the transactions were pre-ordained, the grouping provisions expressly ignored the existence of options.

Comments - The FTT recognised that its decision was 'unsatisfactory given the tax avoidance motive of the appellants'; however, it felt bound by the definition of a group for these purposes. The GAAR (general anti-abuse rule) was introduced to defeat such schemes.

Gemsupa and another v HMRC [2015] UKFTT 97

Tax avoidance scheme involving loan arrangement

Summary - The UT found that a tax avoidance scheme failed as one of the parties was taxable under Sch D Case VI.

These appeals were lead cases relating to a corporation tax avoidance scheme. One company in a group (the lender) lent money to another group company under a loan agreement. This was on terms that although the capital was repayable to the lender, no interest was payable while the loan was outstanding, but instead irredeemable preference shares (equal in value to a commercial rate of interest on the loan) were to be issued to a different group company (the share recipient). Both the lender and the share recipient contended that they were not liable to tax on the interest (or its equivalent).

Decision:

The UT considered that ICTA 1988 s 786(1) is worded as it is in order to catch any arrangement for the lending of money, however that arrangement may be constructed. It therefore rejected contentions

that the application of s 786 required the existence of both a loan and a separate transaction, and that the scope of s 786 should be restricted by the mischief at which it was aimed.

The UT found, however, that the value of the shares did not amount to income of the Lender because of the operation of FA 1996 s 84. Under accounting rules, the value of the shares did not amount to income of the lender.

The last issue was whether the share recipient was receiving income taxable under Schedule D Case VI. The UT observed that the source of the share recipient's income was the loan agreement, in which it was the named beneficiary, even if it did not have the capacity to enforce that entitlement itself. The appeal was therefore dismissed on the Case VI issue.

Comments - The scheme had been widely implemented, so this decision will come as a disappointment to many. The key finding of the UT, which may be appealed, was that a payment can represent income even though its recipient cannot enforce it.

Spritebeam and others v HMRC [2015] UKUT 75

Unprofitable farm

Summary – The Tribunal found that there was no reasonable expectation of profit therefore loss relief was denied

In 1982, the taxpayer and his wife bought a farm. They bought the neighbouring farm in 2002. Both purchases were funded by bank loans. The business made a profit before capital allowances of £2,977 in 2004/05, but made losses for subsequent years to 2012/13. In 2006, the couple bought another farm, again funded by a bank loan.

In 2010, the taxpayer commissioned a farm review from the Scottish Agricultural College which suggested the business would return to profit if certain measures were taken.

The taxpayer was also a full-time dentist and applied to set the farming losses against his other income. HMRC refused the claim on the ground that sideways loss relief was not available because ITA 2007, s 68(3)(b) (reasonable expectation test) was not satisfied. The taxpayer appealed.

Decision:

The First-tier Tribunal said it had to look at the 2010/11 activities in the context of the beginning of the period of loss, ie 5 April 2005. It decided these were largely unchanged in the period. The taxpayer had financing problems which prevented him achieving a profit as soon as he hoped but this was irrelevant. For the purposes of s 68, the anticipation of profit could not have been foreseen by a "competent person" in 2005. The taxpayer's appeal was dismissed.

Comments – This case demonstrates the importance of being able to demonstrate that profit is likely to be made in order to ensure that the loss relief will be available. In this case the taxpayer clearly could not do so.

N Erridge v HMRC TC4294

Church qualifies

Summary – The Tribunal found that church was a qualifying building for business premises renovation allowance

The taxpayer, a property leasing company, claimed business premises renovation allowance in respect of the conversion of a derelict church to create a restaurant. HMRC refused the claim on the basis that the church was not a qualifying building because it had not been used for the purposes of a trade, profession or vocation (CAA 2001, s 360C).

The company appealed.

Decision:

The First-tier Tribunal likened the church to the limited company of naval architects in *William Esplen, Son and Swainston Ltd v CIR*, a 1919 King's Bench Division case. In that case, the judge found that, although the company was not carrying on a profession, it was carrying on a trade or business. Taking into account the constitution and other intentions, the church was "conducted on commercial principles and constituted a trade". Further, the vestry was used as an office. It did not have to make a profit or have the motive of so doing to be in business.

The tribunal concluded that the church was a qualifying building for business premises renovation allowance.

The taxpayer's appeal was allowed.

Comments – This case is unusual as we have not had lots of cases dealing with BPRA. Again it demonstrates the importance for tax of knowing whether a trade is being carried on. As a result the church was held to be a qualifying building for BPRAs.

Senex Investments Ltd v HMRC TC4312

Construction Industry Scheme – Two aspects (Lecture B888 – 9.56 minutes)

The present Construction Industry Scheme (CIS) rules took effect from 6 April 2007. The rules are contained in FA2004 and SI 2005/2045. CIS applies to all contractors, whether sole traders, partnerships, or companies, working within the mainstream construction industry.

In addition, many non-construction businesses or organisations, such as property developers, local authorities, and housing associations, which spend annually £1 million or more over a three-year period on construction work must also comply with CIS.

These notes look at two particular aspects of the scheme: its scope, and gross payment status.

Construction operations - scope

The Scheme applies to payments made by 'contractors' to 'subcontractors' for work involving construction and also other types of work.

A list of included and excluded' construction operations' is given in s74 FA 2004 as summarised below from HMRC Factsheet CIS340.

As a general guide, construction operations cover almost any work that is done in the UK to a permanent or temporary building or structure, or a civil engineering work or installation.

The UK includes United Kingdom territorial waters up to the 12-mile limit. The scheme does not apply to construction work carried on outside the UK. However, a business based outside the UK and carrying out construction work within the UK is within the scheme and must register accordingly.

Where a single contract relates to a mixture of construction and non-construction operations, all payments due under the contract are within the scheme – even if shown on separate invoices. This is the case even if only one of the jobs is regarded as a construction operation.

Some contracts will 'relate to construction operations' because they include work that contributes to the overall delivery of a construction project. For example, a tree surgeon may have many contracts in a year for tree felling. Tree felling is not normally a construction operation in itself, but if the trees are cut down as part of work to clear a site ready to build a housing estate or a road, payments for the tree felling will be within the scheme.

The six main areas of work included are:

1. construction
2. alteration
3. repair
4. extension
5. demolition
6. dismantling

Construction

Construction does include the assembly of prefabricated units and site facilities. Example: the onshore construction of wind turbine towers and modular elements of wind turbine towers that are later towed to their final location at sea is an example of how broad HMRC regards the definition of construction.

Alteration

Alterations can be major or can be as simple as an adjustment or modification. Examples include an alteration to the fabric of a building to accommodate equipment such as an item of plant or machinery, lifts, hoists or heavy-duty conveyors, also the installation of partitioning or shop fittings to allow a building to be used in a different way.

Repair

Repair includes 'making good' and replacement of defective or damaged parts of a building or structure. Repairs also include repair of a building or structure that is necessary following a repair to any systems in the building or structure, even though a repair to the system itself is not a construction operation for the purposes of the scheme.

Demolition

Demolition means pulling down a building or structure.

Dismantling

Dismantling means taking a building or structure apart. This is usually where the materials are expected to be used again. Sometimes part of a building may be destroyed or dismantled prior to a refurbishment or to its use being changed. Often this type of work will be an alteration to the building or structure as well and the legislation is broad enough to include any work that involves any of the following:

- taking a building or structure apart
- totally destroying a building or structure
- rebuilding a building or structure
- altering a building or structure

Other areas

Internal and external cleaning is regarded as a construction operation if it is undertaken whilst the construction contract is ongoing. External cleaning or routine cleaning of existing commercial or industrial premises that are not undergoing any types of construction operations is not regarded as a construction operation unless it is preparatory to painting and decorating.

Integral works i.e. those that must be carried out for a construction operation to be completed may be included within the scheme .For example, the erection of scaffolding might not be considered to be the construction of a structure in its own right, but it is a construction operation because it would not be possible to carry out other works that are construction operations without it.

Finishing operations i.e. works which 'render complete' regarded as construction operations in their own right. They must be considered as part of the overall work that is being carried out as well as part of the contract as a whole. Often, the same work will not be a construction operation when it is carried out as an independent activity.

For example: Tree planting and landscaping in the course of forestry or estate management are not seen as construction operations, but the same works as part of a new housing development would be .

The only exception to finishing operations is carpet fitting. SP12/81 provides that carpet fitting (but no other floor covering) is regarded as excluded from the scheme. However, if carpet fitting is part of a mixed contract, then the entire contract comes within the scheme.

Excluded operations

The following operations are excluded from the scheme:

(a) drilling for, or extraction of, oil or natural gas

(b) extraction of minerals and tunnelling or boring, or construction of underground works

(c) manufacture of building or engineering components or equipment, materials, or plant

(d) manufacture of components for systems of heating, lighting, air-conditioning, ventilation, power supply, drainage, sanitation, water supply or fire protection

(e) the professional work of architects or surveyors, or of consultants in building, engineering, interior or exterior decoration or the laying-out of landscape

(f) the making, installation and repair of artistic works, being sculptures, murals and other works that are wholly artistic in nature

(g) sign-writing and erecting, installing and repairing signboards and advertisements

(h) the installation of seating, blinds and shutters

(i) the installation of security systems, including burglar alarms, closed circuit television and public address systems.

Gross payment status

Subcontractors, including contractors treated as such in a CIS ‘chain’ of operations are eligible to receive payment gross (without tax deduction) provided they fulfil three qualifying tests:

1. The business test;
2. The turnover test; and
3. The compliance test.

These tests are outlined in s64 FA 2004, Sch 11 FA 2004 and Part 6 SI 2005/2045.

The Business Test

The subcontractor must carry out construction work in the UK, or provide labour for such work, and the business must be run through a UK bank account.

Evidence prescribed to satisfy the business test is as follows (SI 2005/2045, reg 27):

- the business address;
- invoices, contracts or purchase orders for construction work carried out;
- details of payments for construction work;
- the books and accounts of the business; and
- details of the business bank account, including bank statements.

The Turnover Test

The applicant must satisfy HMRC that as an individual, turnover from construction work is £30,000 a year or more or in the case of a partnership or company, turnover from construction work must be £30,000 a year or more multiplied by the number of partners or directors. In the case of close companies (broadly, those controlled by five or fewer individuals), the figure will be multiplied by the number of individuals who are directors and/or shareholders. For a husband and wife team, for instance, it would be £60,000.

An alternative test for partnerships and companies is that the business has an annual net turnover from construction work of £200,000 or more, or able to show evidence of relevant payments earned on its own account amounting to at least £30,000 and the existence of future construction contracts entered into where the aggregate value exceeds £200,000 (this test is specified in SI2005/2045 reg 29(2)(d) and is not open to sole traders). Net turnover for this purpose is after deduction of the cost of materials.

The Compliance Test

In the 12 months up to the date of application, the sole trader, or all partners in the case of a partnership, or all directors in the case of a company need to have:

• Completed and submitted all tax returns including, in the case of a company, annual accounts and CT computations

•Paid all tax by the due dates (including PAYE, NIC, CIS and corporation tax, where applicable); and

• Provided any information requested by HMRC.

HMRC will disregard certain minor infringements when reviewing the business' compliance record during the 12 months up to the date of application, as follows:

- Three late submissions of the monthly CIS return – up to 28 days late
- Any self-assessment return made late
- Any employer's end of year return made late
- Three late payments of CIS/PAYE deductions – up to 14 days late
- One late payment of income tax – up to 28 days late
- One late payment of corporation tax – up to 28 days late

Businesses already within gross payment are subject to the same tolerances when examining ongoing compliance, other than personal, partnership and company self-assessment returns which now must be submitted to HMRC within their statutory deadlines.

Contributed by Brian Ogilvie

Construction Industry Scheme –Changes (Lecture B889 – 8.49 minutes)

HMRC is consulting on proposals to improve the operation of the Construction Industry Scheme.

The nil return obligation - change

Many of the penalties currently issued to contractors are for 'nil returns' where no payments to subcontractors have been made. In response to representations HMRC intends to remove the statutory obligation to report a nil return, removing the potential for a penalty to arise in these circumstances.

However when a return is not received by the filing date, HMRC systems will not know whether this is because the contractor is simply late filing the return or because there is no return due. Therefore HMRC intends to operate a simple nil voluntary notification to enable contractors to notify HMRC if they did not pay subcontractors and this will stop a penalty notice being sent out. Otherwise subcontractors will be able to use the online service to appeal against penalties received if no payments were made to subcontractors.

This measure will be implemented from 6 April 2015.

Joint ventures

A draft statutory instrument has been published relaxing the requirements to operate gross payment status for joint venture entities where one of the members already has gross payment status.

In summary, payments to partnerships will qualify for gross payment status where at least one partner already has gross payment status and is entitled to at least 50% of the assets or income of the partnership.

A similar relaxation applies to companies where at least one of the members already has gross payment status and is entitled to at least 50% of the voting power, share capital or issued share capital, or the income available for distribution, or assets of the company.

The measure will have effect from 6 April 2015

Companies in insolvency proceedings

Earlier repayments can be made to liquidators in insolvency proceedings. Currently where a subcontractor is a company, no repayment of any amount deducted and paid over to HMRC by a contractor can be made to the subcontractor until after the end of the tax year in which the deduction was made. These rules will be amended so that in certain cases where the amount deducted by the contractor is excessive, a repayment can be made during the tax year.

This measure will also have effect from 6 April 2015.

Qualifying conditions for gross payment status

Subcontractors who meet qualifying turnover and compliance conditions may apply to be paid gross with no deductions taken from their payments.

It is proposed that the threshold for the upper limit of the turnover test be lowered to help more established businesses with multiple partners or directors qualify for gross payment status. The proposed new upper threshold will be £30,000 per partner or director (unchanged) but subject to an overriding limit of £100,000 (currently £200,000).

An alternative test will continue to apply in the form of prospective receipts for partnerships and companies which can demonstrate evidence of turnover of £30,000 and existence of future construction contracts entered into with an aggregate value in excess of £100,000 (currently £200,000). HMRC states that for sole traders the present minimum turnover threshold of £30,000 should remain in place.

To ensure that smaller businesses are not disadvantaged compared to larger, HMRC proposes using fewer tests in the initial and annual review. The initial and annual tests will be restricted to a requirement to make monthly contractor returns, make timely payments of PAYE/CIS deductions and to make IT/CT self-assessment returns (other than for individual directors)on time.

These changes will take effect from 6 April 2016.

Mandatory CIS online filing

HMRC proposes to remove the option to make monthly CIS returns on paper and to mandate online filing. Around 20% of returns are still filed manually and some concerns have been expressed that this is a high level in the context of making online filing mandatory. This change is also to take effect from 2016/17.

The Government has confirmed that "following mandating of CIS returns, businesses which are not able to file online by reason of age, disability or remote location will have continued access to an alternative method of filing CIS returns. The same application process used to determine exemption from online filing for RTI will apply".

New CIS online appeals service

If a contractor fails to submit returns on time, HMRC charges penalties. To work alongside the new CIS online service, HMRC intends to adopt an automated system for processing CIS penalty appeals.

Taxpayers would be notified by an online messaging service in real time if their appeal was accepted immediately or referred for manual review. HMRC anticipate this process will replace the current paper based appeals service from the date of implementation. The paper based service will still be available for legacy penalties. Again some concerns have been raised about making the online process the only way in which appeals can be levied. The proposed implementation date is again 6 April 2016.

Verification

Any contractor using a new subcontractor must verify that person verified - either online or by telephone. A proposal to make this an online only service has been confirmed but will not come into effect until 6 April 2017.

Contributed by Brian Ogilvie

VAT

VAT: did a payment to the recipient of a supply qualify as a discount?

Summary - The FTT found that rewards paid to instructors were discounts on franchise fees.

Kumon is a provider of educational services. It offers franchises of its teaching methods to individual instructors, who pay a licence fee based primarily on a set amount per pupil. Kumon provides training, access to information, workbooks and support. Instructors receive a yearly award for past performance.

The issue was the VAT treatment of the yearly award. This depended on whether it was a contingent discount deductible from the franchise payments made by the instructors to Kumon or whether the award was the consideration of a separate supply made by the instructors to Kumon.

Decision:

The FTT first noted that the reward payments were linked to the supplies made by Kumon in return for the franchise fee. It was as a result of the agreement that instructors had obligations to Kumon; for instance, promoting the brand and improving their own teaching skills. Furthermore, some elements of the reward payment were linked to elements of the franchise fee; for instance, the number of students. However, the fact that the services were linked did not mean that a separate supply could not be identified.

The FTT concluded that the reward paid to the instructors was for enhancing the basic service for which they paid a franchise fee to Kumon, rather than for a separate supply. By procuring and keeping more students and receiving an award, instructors were effectively paying less per student. Similarly, the element of the reward paid for improved teaching meant that instructors provided improved teaching services to Kumon for the same return.

Comments - The case reviews the extensive case law which concerns transactions in which the customer receives a payment from the supplier. This case confirms that the existence of a separate supply by the customer is critical; without it, the payment received will be treated as a discount.

Kumon Educational UK v HMRC [2015] UKFTT 84

Was a car importer acting as agent or principal?

Summary - The FTT found that a car importer acted as principal and was therefore liable for VAT on the supplies.

The issue was whether Mr Collings was liable on the supply in the UK of vehicles acquired from dealers in other EU states for Mr Collings' customers. Mr Collings maintained that he acted as agent.

Decision:

The FTT found, however, that the evidence suggested that he had acted as principal, referring to a number of invoices addressed to Engineering Unlimited. The use of the word 'commission' in the documents, although suggestive of an agency role, was not sufficient to establish that Mr Collings had not acted as principal.

The FTT added that, in any event, the effect of VATA 1994 s 47(1) (for imported goods) and s 47(2A) (for goods supplied in the UK) is that an agent who acts in his own name in relation to a supply of goods is treated as principal.

Comments - The FTT focused on the fact that invoices had been issued in the taxpayer's name to establish that he must have acted as principal — without regard to the wording of the documents.

Derek Collings t/a Engineering Unlimited v HMRC [2015] UKFTT 81

Exempt supplies and the right to a deduction

Summary - The FTT found that Taylor Wimpey's claim for recovery of input tax was netted off against output tax which had not been accounted for.

Taylor Wimpey had claimed input tax on certain items installed in newly built homes by companies now in its VAT group in the period between 1 April 1973 and 30 April 1997.

Decision:

The FTT had not yet decided the 'set off ' question. HMRC considered that even if Taylor Wimpey was right and it was entitled to recover input tax on separate standard rated supplies, its claim would have been netted off against the output tax that should have been, but was not, accounted for on the standard rated sale of the claim items.

The FTT confirmed that, assuming that the builders' block had unlawfully made Taylor Wimpey's supplies exempt, the developer had a directly effective right to rely on EU law and treat its supplies as standard rated, which gave it a directly effective right to rely on the right to deduct. However, the effect of *MDDP* (C-319/12) was that, in relying on EU law rights, 'a taxpayer must take the rough with the smooth'. If Taylor Wimpey relied on the right for a particular supply to be standard rated, then it must accept that its right to reclaim input tax on that supply was limited by an offset of the output tax. This conclusion was not displaced by subsequent case law.

Comments - This case restates a fundamental principle of the Sixth VAT Directive; a taxable person cannot both benefit from an exemption and exercise the right to deduct tax in relation to the same supply. However, it leaves the question of the legality of the UK builders' block under EU law unresolved.

Taylor Wimpey v HMRC [2015] UKFTT 74

Partial exemption and special methods

Summary - The FTT found that a special method was not appropriate to determine the club's allocation of input tax.

The club was partially exempt and was therefore only entitled to partial recovery of input tax (VATA 1995 s 25). Traders must use the 'standard method' to determine their creditable input tax; however, HMRC has a discretion to allow a 'special method'. The club was appealing against HMRC's decision not to allow a special method, based on floor space, to be used in relation to the clubhouse.

Decision:

The FTT rejected the club's suggested special method given that:

- over a third of the floor area was excluded from the special method and allocated to 'mixed use' or an 'excluded' category, rendering the special method no more precise than the standard method;
- following *Bridgnorth* [2009] UKFTT 126, the availability of some rooms (treated as taxable by the club) to the members was likely to contribute to the 'overall attractiveness' of the club and therefore had an exempt element which made them suitable for the 'mixed use' category, making the special method even less precise;
- a method based on floor space did not appropriately deal with the plant room; and
- the club had used the standard method for a while.

Comments - The case is a useful example of the way the FTT will ascertain whether a special method more precisely determines the allocation of input tax than the standard method. It also suggests that a trader wishing to remain within the special method regime should not apply to use the standard method, even for a short period of time.

The Hurlingham Club v HMRC [2015] UKFTT 76

Business purpose of a fountain

Summary - The FTT found that a fountain, built as part of a development project but located away from it, had been built for business purposes.

HMRC had disallowed input tax incurred in the construction of a pavement fountain, on the ground that the nexus between the fountain and the main development of the Folkestone Harbour — where taxable supplies would be made — was insufficient. HMRC accepted that Folkestone Harbour was a property developer and a taxable trader. It considered, however, that the fountain, built away from the main development site, had not been built for business purposes.

Decision:

The FTT observed that the Folkestone seafront had suffered from a considerable decline and that the fountain had always been part of the concept masterplan. It also noted that the decision to build the fountain had been taken following professional, in order to increase the commercial attractiveness of

the site as a whole. The purpose of the fountain was also to reconnect the quayside with the town, as Fountain Square was close to both.

Additionally, the fountain was a marketing tool, as a nearby plaque bore the name of the developer.

Finally, the FTT pointed to evidence that the fountain had contributed to a drive up in property values and had therefore contributed to the viability of the project.

Comments - The case confirms that an indirect nexus with a project or business may be sufficient to establish that an expenditure has been incurred for business purposes.

Folkestone Harbour v HMRC [2015] UKFTT 101

VAT reduced rate and e-books

Summary - The CJEU found that French and Luxembourg legislation which applied a reduced rate to digital books were in breach of the VAT Directive.

The European Commission had applied to the CJEU for a declaration that, by applying a reduced rate of VAT to the supply of digital (or electronic) books, the French Republic and the Grand Duchy of Luxembourg had failed to fulfill their obligations under the VAT Directive.

The Commission relied in particular on art 98(2), which excludes the application of a reduced rate of VAT to electronically supplied services.

Decision:

The CJEU accepted that by expanding the scope of point 6 of Annex III to the VAT Directive to encompass the 'supply of books on all physical means of support', the EU legislature had intended to clarify and update to technical progress the reference to the notion of 'books'. However, the CJEU found that digital books fell within the ambit of art 98; the supply of a digital book was not a supply of something tangible and must therefore be a supply of a service by electronic means. Furthermore, the principle of fiscal neutrality could not be relied upon to extend the scope of the reduced rate.

Comments - Since January 2015, electronically supplied services, including e-books, are taxed at the place of consumption, so that the Luxembourg reduced rate no longer applies to many supplies made out of Luxembourg. VAT is currently charged at the standard rate on e-books purchased in the UK.

European Commission v French Republic C-479/13 and European Commission v Grand Duchy of Luxembourg C-502/13

Application of VAT exemption on supplies of imported goods

Summary - The CJEU found that the exemption attaching to supplies of prostheses was not affected by the fact that the prostheses were imported.

The three taxpayers were Dutch companies which imported dental prostheses into the Netherlands. All three cases concerned the exemption which applies to dental prostheses under the Sixth Directive (art 140(a) and (b) and 143(a)).

The issue was whether the exemption applies:

(i) to the intra-Community acquisition and the importation of dental prostheses; and

(ii) where the prostheses originate from a member state which has implemented derogating arrangements — and applies standard rating to the supplies.

Decision:

The CJEU observed that the exemption of the supply of dental prostheses made by dentists and dental technicians is intended to ensure that the supply of health-related products does not become inaccessible by reason of the increased costs of those products if their supply were subject to VAT. The CJEU also noted that the reference factor was the existence of an exemption for the supply of the goods in the member state of destination. Since the supply of prostheses was exempt in the Netherlands, their importation was also exempt. Consequently, the fact that the originating member state had implemented the derogating arrangements was irrelevant.

Comments - This decision could lead to discrepancies within the common market, as the same supply could be standard rated in the originating country and exempt in the country of destination. Applying *MDDP* (C-319/12), the case also confirms that a VAT trader cannot both benefit from an exemption and exercise the right to deduct.

VDP Dental Laboratory NV v Staatssecretaris van Financiën (C-144/13) and Staatssecretaris van Financiën v (i) X BV (C-154/13) and (ii) Nobel Biocare Nederland BV (C-160/13)

What are the premises?

Summary – The Tribunal held the premises included the food court.

The taxpayer ran a kiosk selling bagel sandwiches in a food court. It used to account for output tax on the sales of takeaway cold food on the basis that the food court area was part of the premises of the outlet and the customers would eat their purchases there. It later decided that zero rating should apply because the food court was not part of the business premises and the food was not therefore consumed on its premises. It submitted a claim for a refund which HMRC refused. The taxpayer appealed.

Decision:

The First-tier Tribunal held that no food could be eaten in the kiosk because no customer could enter it. But on a common sense view, for the purposes of VATA 1994, Sch 8 group 1 note 3(a), the premises included the food court.

The taxpayer's appeal was dismissed.

Comments - Neil Warren, independent VAT consultant, said: “This case illustrates how difficult it is to apply a past tribunal decision to the circumstances of a different business. The taxpayer based its claim largely on the outcome of a 2009 case about on-site consumption (*Made to Order* (20959)) but HMRC highlighted one difference between the two. The tribunal accepted this and agreed that it was not obliged to follow the same approach of the earlier case.”

Bagel Nash Ltd v HMRC TC4279

Reasonable choice

Summary – The Tribunal held that it was reasonable to select the category of ”any other activity”.

The taxpayer, a one-person company, applied for VAT registration with effect from June 2011. The business was described as design engineering services in relation to the assembly and manufacture of pressure, containing subsea equipment.

On the advice of its accountant, the taxpayer applied for the VAT flat rate scheme. At first the most suitable category appeared to be “manufacturing fabricated metal products” because it included general mechanical engineering. But because the company did not manufacture anything, it opted for “any other activity not listed elsewhere”. HMRC said the business should be in the sector for architects, civil and structural engineers and it had been unreasonable to select the “any other activity” option.

The taxpayer appealed.

Decision:

The First-tier Tribunal held the taxpayer was “diligent and reasonable” in its choice of category since the nature of its business was not listed. The business was entirely unrelated to that of an architect or civil or structural engineer. The judge said: “If Parliament had intended that all engineering fell into that category there would have been no reason whatsoever to introduce the words 'civil' and 'structural'.”

He added: “The fact that HMRC think that any engineering design or consultancy work falls into their chosen category does not change the ambit of that category at all.”

The department provided no explanation as to which it thought the taxpayer's choice of category was unreasonable, and “should not, and could not” have been reasonably satisfied for its decision.

The taxpayer's appeal was allowed.

Comments - The First-tier Tribunal held the taxpayer was “diligent and reasonable” in its choice of category since the nature of its business was not listed. The business was entirely unrelated to that of an architect or civil or structural engineer which HMRC had indicated.

SLL Subsea Engineering Ltd v HMRC TC4256

Supply of care workers by an agency

Summary - The CJEU found that the supply of care workers by a temporary work agency was not VAT exempt.

Go fair, a temporary work agency, hired out care workers it employed to inpatient and outpatient care establishments. It had appealed the decision of the German tax authorities that its services were not VAT exempt as it did not operate an establishment involved in nursing and caring.

Decision:

The CJEU noted that it is for the national authorities, in accordance with EU law (in particular, the Principal VAT Directive 2006/112/EC art 132(1)(g)) to take a number of factors into account when determining which bodies must be recognised as 'devoted to social wellbeing'. German law had not recognised temporary work agencies as such bodies. The CJEU found that the workers were employed and therefore did not independently carry out an economic activity; and so the exemption could not apply to them. In any event, the relevant supply was that provided by Go fair. However, it could not be said that Go fair was a body 'devoted to social wellbeing', as the supply of workers is not, in itself, a supply of services of general interest carried out in the social sector.

Comments - As pointed out by the German referring court, the services provided by Go fair were closely linked to welfare and social security work. However, this was not enough for the exemption to apply.

'Go fair' Zeitarbeit OHG v Finanzamt Hamburg-Altona (C-594/13)

Fleming claims and transfers of hospitals

Summary - The FTT found that, on the transfer of hospitals between NHS trusts, the right to reclaim VAT had also been transferred.

The appellants, NHS hospitals, had been the object of several transfers between NHS trusts. They had lodged *Fleming* claims and the issue was whether any right of any predecessor body had been transferred; in particular, the right to recover output tax and/or underclaimed input tax.

Decision:

The FTT noted that although no document had been produced, a document was bound to exist. However, it cannot have referred specifically to VAT repayment claims as, at the time, no such claims were in contemplation.

The FTT found that the presumption of correctness could not prove what rights were transferred; it only proved that the transfers of the hospitals had been effected in correct form. Whether the transfers of rights included the right to reclaim VAT depended on circumstantial evidence.

The FTT accepted evidence that the hospitals had been transferred 'lock, stock and barrel', which corroborated the contention that all rights had been transferred. Finally, the FTT found it clear that the Secretary of State had intended each hospital to operate in the same way at each stage.

Comments - The amounts at stake were not significant, but the FTT pointed out that the decision would be of interest to similar claimants, whose appeals had been stood over behind this case.

Northern Lincolnshire & Goole Hospitals NHS Foundation Trust v HMRC 2015] UKFTT 103

The meaning of 'site' for the aggregate levy

Summary - The UT confirmed that a wide interpretation of 'site' should prevail for the purpose of the aggregate levy.

Northumbrian Water is a water and sewerage company which had engaged in construction work for the raising of the level of a reservoir. Gravel, which was needed to achieve this, was obtained from a nearby pit. The issue was whether the use of that gravel amounted to commercial exploitation of aggregates for the purpose of FA 2001 Part 2.

It was accepted that the gravel was aggregate. If the only exploitation resulted in the aggregate in its natural form becoming part of the land at the site from which it was extracted, that exploitation did not count as commercial exploitation. The FTT had found that a purposive interpretation was required. It had considered that exploitation by way of use for construction purposes was the most likely to lead to aggregates becoming part of the land again. The FTT also thought that it would be too narrow to interpret 'site' so that the exclusion only applied where the aggregate was used for construction purposes within the footprint of the pit from which the aggregate was extracted.

Decision:

The UT confirmed that the FTT had applied the right test and that no commercial exploitation of the aggregate had taken place.

Comments - The narrow interpretation of 'site', suggested by HMRC, would have made the exclusion for non-commercial exploitation redundant, as very few exploitations would have been able to qualify. This decision will therefore come as a relief to those that carry out activities subject to the levy.

HMRC v Northumbrian Water [2015] UKUT 93

The reduced rate of VAT and complex supplies

Summary - The UT found that the reduced rate could not apply to an element of a complex supply to which the standard rate applied.

Colaingrove provided serviced chalets and static caravans at holiday parks. The issue was whether the provision of electricity by Colaingrove to holiday makers should be taxed at a reduced rate of VAT

(under VATA 1994 Sch 7A Group 1), notwithstanding that the charge for electricity was an element of a single complex supply of serviced accommodation taxed at the standard rate.

Colaingrove contended that UK domestic legislation, on its true construction, provided for a reduced rate to apply to the supply of electricity, where that supply formed a concrete and separate part of a wider supply. It therefore fell to the UT to decide whether the exemptions, as enacted in the UK, fell within the ambit of the derogation permitted by EU law.

Decision:

The UT wondered why Parliament would only give a tax break to those holiday makers that received their electricity by means of a single supply. It considered, however, that Parliament may have wanted to draw a distinction between the provision of electricity in a verifiable amount and the provision of a fixed charge irrespective of use. Agreeing with *AN Checker* [2013] UKFTT 506, the UT concluded that the 'stumbling block' was the combined effect of the *Card Protection Plan* (*CPP*) (C-349/96) line and the provision in VATA 1994 s 29A that a reduced rate of VAT may only be charged on a 'supply that is of a description for the time being specified in Schedule 7A'. Neither *French Undertakers* (C-94/09) nor *Talacre* (C-251/05) 'trumped' the *CPP* analysis. The supply was not a supply specified in Sch 7A; and s 29A applied only to the single complex supply and not to elements of that supply.

Comments - Since *French Undertakers* and *Talacre*, many have wrestled with the notion that elements of a complex standard rated supply may be taxable at a reduced rate. This case suggests that those decisions were of limited application, so that most complex supplies should be charged at a single rate. In finding as it did, the UT recognised that its decision would have undesirable results when seen from the point of view of the recipients of the supply.

HMRC v Colaingrove [2015] UKUT 80

VAT issues when converting commercial property into dwellings (Lecture B890 – 15.48 minutes)

Introduction

There is no doubt that the property market is doing quite well at the moment – and a lot of non-residential properties, such as High Street shops and offices, are being converted into dwellings eg flats. A common project is to convert public houses into dwellings, mainly because of the difficult trading faced by many pubs.

I'll base this presentation on the practical situation of a public house being converted into flats but the same principles will apply to other residential conversions.

Buying the pub – avoiding a VAT charge (VAT1614D)

It is very likely that the brewery selling the freehold of the public house will have an option to tax election in place on the building so will be seeking to add 20% VAT to the selling proceeds. This is usually because they will have rented out the premises to a tenant and in order to claim input tax on capital refurbishment projects (usually paid for by the landlord) they will have needed to opt to tax the building and charge VAT on the rent to the tenant. But good news – if the buyer intends to convert the pub into residential units, then he can issue form VAT1614D to the brewery in order for the sale to be exempt from VAT rather than standard rated. A couple of tips about this important form:

The form should be given to the brewery before the price of the deal is legally fixed, usually before exchange of contracts. It should be signed by a responsible person such as the company director. See HMRC Notice 742A para 3.4.3 which has the force of law.

There is no need for the buyer to have formal planning permission in place to build flats – only the intention to convert it into dwellings, but the intention should have a commercial basis to it.

Form VAT1614D could also be used if the intention of a project was to convert it into a building to be used for a 'relevant residential purpose' eg an elderly persons home.

If HMRC discover a subsequent problem with the form, then it is the buyer who is usually responsible for any tax underpaid for eg issuing a false certificate – there should be no comeback on the seller as long as he has acted in good faith.

Note - it is possible that the seller might refuse to accept the form if, for example, he has an input tax challenge with the capital goods scheme, where an exempt sale of the building might cause him a problem with the scheme's annual adjustments. In such circumstances, HMRC's guidance is very clear.

HMRC VAT Notice 742A

3.4.3 When should the certificate be provided?

As a supplier, if you receive a certificate by the time set out in box B below, you must exempt your supply of the building or part of the building to which the certificate relates.

Box B - The certificate must be given before the price for the grant to the recipient by the seller is legally fixed, for example by exchange of contracts, letters or missives, or the signing of heads of agreement.

3.4.4 Can I accept a certificate after the time specified in box B?

If you receive a certificate after the time the price for the grant has been legally fixed, you do not have to accept the certificate, but may do so at your discretion, but only in respect of supplies that arise after the certificate is given. For example, if you have granted a lease for periodic rental payments, you may only exempt the rental supplies that take place after you receive a certificate.

If you sell the freehold, you may only exempt the supply if it takes place after you receive a certificate (in the case of freehold sales, the supply would typically take place at completion). It should be noted that it is the fixing of the price of the grant that establishes the time by which the certificate should be given.

Care should be taken, particularly in relation to the signing of the heads of agreement, as this will not in all cases legally fix the price.

SDLT saving

The good news about buying the pub without being charged VAT is that there is also a welcome saving in SDLT (Stamp Duty Land Tax) because the calculations for this tax are always based on the VAT inclusive cost of a property

Example 1

ABC Brewery is selling the freehold of The Whalley pub to John for £240,000 plus VAT because of the option to tax election it has in place. The SDLT charge on the purchase (payable by the buyer) will be £8,640 ie £240,000 plus VAT of £48,000 multiplied by 3%. The 3% rate applies because the total purchase price exceeds £250,000.

If John is able to provide the brewery with form VAT1614D before exchange of contracts, on the basis that he intends to convert the pub into flats, then the SDLT charge will reduce to £2,400 ie £240,000 x 1%. The SDLT saving is £6,240.

The other positive point about buying the pub without being charged VAT is that a cash flow problem is avoided ie the time delay between paying the VAT to the brewery when it is purchased to the time (possibly three months later) when it is claimed as input tax on a VAT return.

Builder services

Builder services that relate to the conversion of a non-residential building into a residential building (ie dwellings in our case) are subject to VAT at 5% rather than 20%. And this rate applies to the materials supplied by the builder as part of his work.

Legislation – VATA1994, Sch 7A, Group 6.

There is often concern amongst advisers that in the case of a conversion to dwellings, the builder must be given a signed certificate from the developer confirming the creation of dwellings – and this should be available to HMRC in the event of a compliance visit. This is not necessary,

Box 2 – extract from HMRC Notice 708, para 17.1

When does a contractor or developer need to hold a certificate?

You need to hold, within your business records, a valid certificate when you make:

- any zero-rated or reduced-rated supply in connection with a building that will be used solely for a 'relevant residential purpose' - see paragraph 14.6, or
- any zero-rated supply in connection with a building that will be used solely for a 'relevant charitable purpose' - see paragraph 14.7.

There is no requirement to hold a certificate for zero-rated or reduced-rated supplies in connection with buildings that will be used as one of the types of dwelling described at paragraphs 14.2 to 14.5.

The 5% rate does not apply to 'professional services' such as architects, surveyors, project managers, solicitors – their services are always standard rated.

Reclaiming input tax?

So far I have considered how the buyer of the pub can minimise the VAT paid on his expenditure ie by buying the building as VAT exempt and then by maximising the opportunities to acquire building services at 5% rather than 20%. But what about the 5% VAT he has paid on these services, plus the 20% VAT paid to builder merchants when he buys materials without services, or the 20% VAT paid on professional fees?

The good news is that if his intention is to sell the flats on either a freehold basis or with a lease exceeding 21 years, then the sales will be zero-rated on the basis that the building has not been used for a residential purpose in the last ten years.

Legislation – VATA1994, Sch 8, Group 5, Item 1 – see also Note (7) re the ten year rule.

So if sales are zero-rated, then the buyer can obviously register for VAT (if not already registered) and claim input tax on the relevant costs of the project. But what if the buyer's intention is to rent out the flats once they have been completed? In this situation, the income generated by the project will be exempt rental income, and there is no scope to opt to tax income from a residential building. However, there is a possible window of opportunity to claim input tax, which is accepted by HMRC as legitimate tax planning rather than avoidance, on the basis that the legislators always intended that developers could claim input tax on costs of either creating new dwellings from bare land or, as in our case, conversion projects that create dwellings that were not there before:

- The developer could sell the completed flats to a connected party eg a separate limited company or different legal entity to the one that has constructed the flats. This sale would create a zero-rated sale and therefore avoid a problem with input tax recovery.
- The second legal entity will then act as landlord to rent out the flats – this entity does not have any input tax to claim so the exempt income does not create a problem.

The above process will need to consider other taxes – beyond the scope of this presentation.

Owner accommodation in the pub

So far we have assumed that public house only consisted of commercial premises. But what if the ground floor of the building was used as the pub and the first floor already had a purpose built flat that had been used in the past as the owner's accommodation? The VAT position now changes quite a lot:

The purchase of the premises from the brewery will still be VAT exempt as a result of the option to tax override for the ground floor, and the fact that the sale of the first floor flat will be exempt anyway.

The builder services on the first floor work could still qualify for a 5% rate of VAT under a separate part of the legislation if the project produces a change in the number of units on that floor. In other words, if we start with one flat and end up with two or more, then all of that work by the builder will be subject to 5% VAT. The legislation also applies if the number is reduced from eg three to two – but that is not relevant here because we are only starting with one. And the ground floor conversion work is not a problem either because that involves a conversion from a non-residential building to residential flats ie subject to 5% VAT as considered above.

The problem occurs when we sell the first floor flats – this floor has been used for residential purposes in the last ten years, so the flat sales are exempt from VAT rather than standard rated. The sales relevant to the ground floor are still zero-rated. The end result? Our developer will be partially exempt and will need to apportion input tax to block recovery on the first floor costs (and part of the VAT on common areas such as the roof).

Contributed by Neil Warren

Budget 2015

Personal Tax (Lecture P886 – 8.13 minutes)

2015/16 tax year

Income tax allowances

	2015/16
Personal allowance for people born after 5 April 1938	£10,600
Income limit for personal allowance	£100,000
Personal allowance for people born before 6 April 1938	£10,660
Married couple's allowance (born before 6 April 1935)	£8,355
Income limit for allowances for those born before 6 April 1948	£27,700
Minimum amount of married couple's allowance	£3,220
Blind person's allowance	£2,290

The personal allowance for those born between 6 April 1938 and 5 April 1948 (which was frozen at £10,500) is aligned with the basic personal allowance from 6 April 2015, meaning that the only age-related allowance available is for those born before 6 April 1938 (which remains frozen at the 2012/13 amount).

For 2015/16, the personal allowance will be tapered where the taxpayer's adjusted net income is between £100,000 and £121,200. Those with adjusted net income of £121,200 or more will not be entitled to a personal allowance.

The current legislation states that the transferable amount is £1,050 for 2015/16, but this has been increased to £1,060 in Budget 2015 to account for the increase in the personal allowance. In order to make the transfer, both parties must not be higher rate or additional rate taxpayers (prior to the transfer). Therefore, this may be of benefit only where one of the couple is not able to utilise the full personal allowance.

Income tax rates and taxable bands

Rate	2015/16
Starting rate for savings: 0%	£0–£5,000
Basic rate: 20%	£0–£31,785
Higher rate: 40%	£31,786–£150,000
Additional rate: 45%	Over £150,000

The dividend rates remain 10% (dividend ordinary rate), 32.5% (dividend upper rate) and 37.5% (dividend additional rate).

In 2015/16 the higher rate will kick in at an income level (before personal allowances) of £42,385 (rather than £41,865 as in 2014/15).

National insurance rates and thresholds

	2015/16 (amount per week unless stated)
Lower earnings limit, primary Class 1	£112
Upper earnings limit, primary Class 1	£815
Upper accrual point	£770
Primary threshold	£155
Secondary threshold	£156
Upper secondary threshold	£815
Employment allowance (per employer)	£2,000 per year
Employees' primary Class 1 rate between primary threshold and upper earnings limit	12%
Employees' primary Class 1 rate above upper earnings limit	2%
Employees' contracted-out rebate (between the lower earnings limit and the upper accrual point), for contracted-out salary-related schemes only	1.4%
Employers' secondary Class 1 rate above secondary threshold	13.8%
Employers' contracted-out rebate (between the lower earnings limit and the upper accrual point), for contracted-out salary-related schemes only	3.4%
Class 1A rate on employer-provided benefits	13.8%
Class 1B rate on amounts included in a PAYE settlement agreement	13.8%
Class 2 rate	£2.80
Class 2 small profits threshold	£5,965 per year
Class 3 rate	£14.10
Class 4 lower profits limit	£8,060 per year
Class 4 upper profits limit	£42,385 per year
Class 4 rate between lower profits limit and upper profits limit	9%
Class 4 rate above upper profits limit	2%

Note that the Government announced its intention to abolish Class 2 national insurance completely and reform Class 4 national insurance to include a contributory benefit test at some point in the next Parliament as part of a simplification agenda.

2016/17 tax year

Income tax allowances

The Chancellor announced in the Budget that the personal allowance for 2016/17 will be £10,800 (an increase of £200). This means that the basic personal allowance for all individuals, no matter when they were born, is £10,800. The transferable tax allowance for 2016/17 will be £1,080.

Income tax rates and taxable bands

The basic rate band limit for 2016/17 will be £31,900 (an increase of £115). This means that the higher rate will kick in at £42,700 (rather than £42,385 as in 2015/16). This is an increase of less than 1%. Although this is welcome, it does not combat the effect of fiscal drag which is pulling middle income taxpayers into the higher rate of tax.

The Chancellor announced the new personal savings allowance which is to be legislated in a future Finance Bill and is to apply from 6 April 2016. This will exempt the first £1,000 of savings income of basic rate taxpayers and the first £500 of savings income of higher rate taxpayers from income tax. Additional rate taxpayers will not benefit. This will remove income tax on savings for 95% of taxpayers. It is expected this will apply in addition to the income tax exemption for savings in ISAs.

The starting rate for savings will also apply in 2016/17, meaning that if someone were to receive £16,800 interest in the tax year (and had no other income), no tax would be due as the income would be covered by the personal allowance of £10,800, the starting rate for savings of £5,000 at 0% and the £1,000 personal savings allowance.

Although the personal savings allowance is dependent on legislation by a future Government, this would neatly tie up with the announcement that the self assessment tax return will be abolished. Removing the need for many higher rate taxpayers in employment or receiving a pension to pay income tax on savings income would take these people out of the compliance net completely.

National insurance

The state pension will be reformed into a single-tier pension from April 2016, meaning that the state second pension (S2P) will be abolished. This means it will no longer be possible for individuals to contract-out.

2017/18 tax year

Income tax allowances

The Chancellor announced in the Budget that the personal allowance for 2017/18 will be £11,000 (an increase of £200). The transferable tax allowance for 2017/18 will be £1,100.

Income tax rates and taxable bands

The basic rate band limit for 2017/18 will be £32,300 (in increase of £400). This means that the higher rate will kick in at £43,300 (rather than £42,700 as in 2016/17).

Changes to existing ISA rules

From Autumn 2015, individuals will be able to withdraw funds from their ISA and subsequently replace the money without it counting towards their annual ISA subscription limit and whilst retaining the tax-free status of the account. However, the funds must be replaced in the **same tax year** as they were withdrawn.

In addition, it is intended that the list of qualifying investments for ISAs will be extended to include:

- bonds issued by co-operative and community benefit societies
- securities issued by small and medium-sized businesses which are traded on a recognised stock exchange
- crowdfunded debt-based securities and peer-to-peer loans (following a consultation process)

Help to buy ISAs

'Help to buy' ISAs will be introduced from Autumn 2015 to help first-time buyers to save for a deposit on a home in the UK. As well as the interest being tax-free, the Government will supplement the amount saved with a 'bonus' of 25% (equivalent to basic rate tax relief at source) up to £3,000 per person, which will be applied when the property is purchased.

Help-to-buy ISA accounts are limited to one per person rather than one per home, so two people saving to buy a joint property could each receive a bonus. Savers must be 16 or over and the savings must be used to buy a home costing less than or equal to £450,000 in London and less than or equal to £250,000 elsewhere in the UK.

As is currently the case, it will only be possible to subscribe for one cash ISA per tax year. Therefore it will not be possible for a first-time buyer to benefit twice under the ISA rules by opening a help to buy ISA and a cash ISA in the same tax year.

Premium bonds

The premium bond investment limit will increase from £40,000 to £50,000 on 1 June 2015.

Venture capital schemes

The Budget includes proposals to sharpen the targeting of reliefs for investments under the venture capital schemes and to make them compliant with new EU rules on state aid.

New requirements will have to be met in order for relief to be available in respect of an investment:

- the investment must be made with the intention to grow and develop a business
- the company in question must be less than 12 years old when it first receives its first investment under either the venture capital trust (VCT) scheme or enterprise investment scheme (EIS), unless the total amount invested is equivalent to more than 50% of the turnover averaged over the preceding five years
- all investors must be independent from the company at the time of its first share issue

A new overall cap will apply to the amount that a company can receive in total from both VCT and EIS investments. That cap is to be £15 million for most companies although VCT and EIS investments in companies that are knowledge intensive can total up to £20 million. Another variation from the normal VCT rules to be introduced for knowledge intensive companies is that they will have an employee limit of 499 employees rather than the usual 249.

The final proposed change is that, as from 6 April 2015, the requirement that the company must spend 70% of any money raised under the seed enterprise investment scheme (SEIS) before seeking EIS or VCT funding will be removed.

In a separate refinement to VCT, EIS and SEIS, as previously announced in the Autumn Statement 2014, the rules for each will be amended to exclude investments in companies that benefit substantially from renewable energy subsidies.

Social VCTs

Incentives for social investment have been extended by the proposed introduction of new social VCTs. Legislation will be included in a future Finance Bill.

Qualifying investments in social VCTs will be eligible for income tax relief at 30% (subject to state aid approval). Relief will be given as a tax reducer in the same way as for investment in traditional VCTs and similar social investments. Social VCTs will have the same excluded activities as those which currently apply in respect of social enterprises under the social investment tax relief provisions.

As with traditional VCTs, dividends received from a social VCT will be exempt from income tax and disposals of shares in the social VCT will be exempt from capital gains tax. It is assumed that this means that capital losses will similarly not be allowable.

Pensions

Sale of annuity income

The Chancellor confirmed his announcement earlier this week that he plans to facilitate the creation of a second-hand market in annuities which would allow existing annuitants to exchange their annuity income for a cash lump sum.

It is important to note that the Chancellor's new proposal is not to allow the reversal of the original annuity contract. It is to allow the annuitant to sell the income stream to a second-hand buyer without incurring the punitive tax charges of an unauthorised withdrawal. The second-hand buyer is most likely to be an insurance company or other institutional investor, perhaps buying in bulk. The government does not intend to allow the original provider to buy back and then cancel the policy.

Having sold the policy, the annuitant would then have the choice of taking the proceeds in a lump sum or transferring them to a drawdown account. The amount taken would be taxed at the annuitant's marginal income tax rate for the year. As with other pension withdrawals after April 2015, a substantial sum (in excess of £35,000) would probably push the pensioner into higher rates. The option of transferring the proceeds to a drawdown account would allow him to spread the withdrawal over several years to keep the tax rate low.

The provision may, however, be attractive in limited circumstances such as where the annuity provides a very small income (or an insignificant portion of the pensioner's income), but the capital sum, although much reduced, would be worthwhile.

Pensions tax relief

The Chancellor said that he had considered a further reduction in the annual allowance. The Chancellor has decided against a reduction in the annual allowance, but it is known that other parties are in favour.

However, he has stated that in the next parliament there will be a reduction in the lifetime allowance from £1.25m to £1m.

Company cars

As usual in the annual Budget, the documents provide advance information about the changes to company car tax rates that will apply from 2015/16 to 2019/20, but this article focuses only on the changes for 2015/16 to 2018/19 as the announced rates for later years could well change again before coming into use.

We expect the rates for 2017/18 and 2018/19 to be included in Finance Bill 2015. The appropriate percentage to be applied to the price of a car to arrive at the taxable benefit continues to be determined by reference to the CO2 emissions level of the vehicle, with the lowest appropriate percentages applying to the vehicles with the lowest levels of CO2 emissions.

For 2017/18 the lowest appropriate percentage will be 9% which will apply for cars emitting 0-50g CO2 p/km. Cars with emissions between 51-75g CO2 p/km will have an appropriate percentage of 13% and those whose emissions rate is 76–94g CO2 p/km will have an appropriate percentage of 17%.

The appropriate percentages for all other bands above 94g CO2 p/km will increase by 2% compared with 2016/17 up to a maximum of 37%.

For 2018/19, the appropriate percentage for each band will increase by a further 2%, again to a maximum of 37%.

Company vans and car or van fuel benefits

The rate of the benefit charge for company vans, and for fuel provided for company cars or vans, will be increased in line with inflation in the autumn based on the Retail Price Index figure for September.

Currently there is no benefit charge applicable on a company van that has a zero rate of emissions, but, as announced in last year's Budget, this will change from 2015/16 onwards. Legislation will be included in Finance Bill 2015 to increase the van benefit charge on zero emission vans on a tapered basis so that the full van benefit charge will apply from 2020/21:

Year	% of full van benefit charge
2015/16	20%
2016/17	40%
2017/18	60%
2018/19	80%
2019/20	90%
2020/21	100%

Simplification of employee benefits

The only change to be made following consultation on that draft legislation concerns the exemption for trivial benefits.

The original proposals offered a blanket exemption for any benefit in kind that cost the employer no more than £50, provided the benefit itself met certain conditions.

This change has now been deferred to a future Finance Bill.

National Minimum Wage

The Chancellor confirmed the intention announced earlier this week that the National Minimum Wage will be increased as follows:

Category	Current rate	New rate from 1 October 2015
Workers aged 21 and over	£6.50 per hour	£6.70 per hour
18–20 year olds	£5.13 per hour	£5.30 per hour
16–17 year olds	£3.79 per hour	£3.87 per hour
apprentices	£2.73 per hour	£3.30 per hour
accommodation offset	£5.08 per day	£5.35 per day

Capital Taxes (Lecture P887 – 10.29 mnutes)

Capital gains tax rates and exempt amount

The annual exempt amount for capital gains tax is to be £11,100 in 2015/16. The annual exempt amount for trustees in 2015/16 is £5,550.

CGT and wasting assets

The government proposes to include in Finance Bill 2015 a restriction to the general CGT exemption for wasting assets. The exemption will only be available where the assets in question have been used in the seller's own business.

The proposal is a direct response to the outcome of the case of Lord Howard's executors which HMRC lost in the Court of Appeal. The case was highly significant for other landed estates where property such as a stately home is run as a business, using valuable family assets.

The restriction will apply where the person selling the asset is not the same as the person who has used it as plant. The stated aim of the measure is to prevent avoidance of CGT by loaning assets to a business.

Landed estates will need to review the ownership of valuable antiques and works of art, and if practicable, align the ownership with the business entity.

Entrepreneurs' relief changes

Following on from the changes to entrepreneurs' relief which were announced at the Autumn Statement 2014, the rules have been further tightened with immediate effect:

- contrived structures — entrepreneurs' relief is denied on disposals of shares in companies which are not trading in their own right (ignoring interests in joint ventures or partnerships)
- associated disposals — the individual must dispose of at least 5% of the business (partnership interest or shares / securities) in order to claim entrepreneurs' relief on an associated disposal of business assets. There was no requirement as to the minimum interest in the business before (

The Government will consider whether certain academics should be eligible for entrepreneurs' relief on disposals of shares in spin-out companies.

Inheritance tax

The nil rate band remains £325,000 and the rate of inheritance tax remains unchanged.

Emergency service personnel exemption

Following consultation last year, the Chancellor announced in his Autumn Statement that a full IHT exemption is to apply to the estates of emergency service personnel who die as a result of responding to a 'blue light' situation. The exemption is based on the existing provisions for armed services personnel.

After further consultation, Finance Bill 2015 will extend the terms of the exemption to include serving and former police officers, and other service personnel targeted because of their status. The exemption would therefore cover those who are attacked because they are police or armed services personnel, even if they are not on duty at the time.

Simplifying charges on trusts

The draft Finance Bill 2015 included legislation designed to counter pilot trusts, and revised the rules relating to the charges on relevant property trusts. This long running saga appears to have been extended yet again.

In relation to pilot trusts, it was proposed that the calculation of 10 year and exit charges would take account of 'same-day additions'. This meant that where property was added on death to multiple trusts, (ie previously created pilot trusts), the calculation would effectively combine it into one trust, thus losing the benefit of multiple nil rate bands. The consultation has apparently raised difficulties with the detailed operation of the proposal, so legislation has been postponed to a future Finance Bill.

The draft Finance Bill 2015 included a grandfathering provision which disapplied the new rules to a Will executed before 10 December 2014. The cut-off date for the execution of the Will has now been extended for 12 months, but the intention is to limit the exclusion to deaths before 6 April 2017. For a limited period, pilot trusts are still on the agenda..

IHT online

Draft regulations introducing a new digital service for inheritance tax are to be published shortly after the Budget.

Deeds of variation

The Chancellor announced as part of his tax avoidance package that the government will conduct a review on the avoidance of inheritance tax through the use of deeds of variation.

Administration (Lecture B886 – 10.44 minutes)

Action against tax avoiders

The Chancellor also announced that the Government intends to introduce tougher penalties for those who persistently enter into tax avoidance schemes that fail and to allow HMRC to publish the names of such avoiders. It also intends to apply sanctions to avoiders who repeatedly abuse reliefs as well as introducing a new specific penalty applicable to the tax advantages countered by the General Anti-Abuse Rule. It will also widen the scope of the Promoters of Tax Avoidance Schemes regime so that it covers promoters whose schemes are regularly defeated by HMRC. None of these changes will come into effect in the near future.

The Government intends to introduce tougher sanctions for those who persistently enter into tax avoidance schemes that fail, including:

- further reporting requirements
- surcharges if the tax return is inaccurate due to a failed tax avoidance scheme
- restriction of tax reliefs for those who have "a record of trying to abuse them" through failed tax avoidance schemes
- publishing the names of such avoiders

Gift aid

The Chancellor proposed in the Budget to extend the Gift Aid small donations scheme. It will apply to a maximum annual donation of £8,000 collected in cash, eg in collecting tins and envelopes. The charity may claim a Gift Aid style top-up payment of up to £2000. This is planned for a future Finance Bill.

Abolition of tax returns

In what will be a shock to many tax advisers, the Chancellor announced the "end of the annual tax return". Whilst many commentators have focussed on the self assessment tax return for individuals and sole trader businesses, the documents released on Budget day seem to suggest that this will apply to other returns as well.

We have the following details:

- the tax return will be replaced by a secure digital tax account that allows taxpayers to make real time changes to their information and pay any tax due
- it appears that this will apply to "individuals and small businesses" only and that 15m taxpayers will be brought within the new regime by 2016, and 50m taxpayers by the end of 2020
- HMRC will pre-populate the digital account with the information it has already received (eg earnings and taxable benefits from the employer, pension income from the insurer and bank and building society interest from financial institutions)
- it will be possible to link business accounting software with the digital tax account by 2020, feeding data directly into the digital tax account
- agents will be able to access digital tax accounts on behalf of their clients

The precise scope of the proposals are unclear, but those businesses with corporation tax, VAT and PAYE liabilities will also be included in this simplification measure (although there is nothing to suggest that VAT returns and RTI submissions would not continue as normal).

It is unclear how the legislative framework will be amended to support these changes, such as:

- whether taxpayers need to click to 'approve' the information or whether inaction (on the basis that all the information is correct) will be sufficient
- the deadline for checking and 'approving' the information or advising HMRC of further tax to pay
- penalties associated with failing to comply with obligations

It will be interesting to see if, as appears to be case based on the information released, other taxpayers such as trusts, personal representatives and larger businesses are to continue to file tax returns as normal, or whether there will be separate tax administration legislation, which will run in parallel with the existing rules.

New payment process

Digital tax accounts will allow a new, more flexible, payment process.

Currently, it is only possible to set up a regular weekly or monthly payment plan if the taxpayer has a direct debit payment plan with HMRC and files his tax return online using the free HMRC software.

Offshore disclosure facilities

The popular Liechtenstein disclosure facility (LDF) and Crown Dependencies disclosure facilities will be closed early, ending in December 2015 rather than April 2016 and September 2016, respectively.

Instead, a new disclosure facility will begin in January 2016 and end in mid-2017. The new disclosure facility will have "tougher terms" than the other facilities including:

- penalties of at least 30%, and
- no protection from criminal prosecution

Business Tax (Lecture B887 – 7.09 minutes)

Annual investment allowance

The annual investment allowance (AIA) for capital allowances is set to reduce from £500,000 per annum to £25,000 from 1 January 2016. The Chancellor stated that "a better time to address this is in the Autumn Statement", but indicated that the level of the reduction would be unacceptable and that the AIA would be set at to "a much more generous rate" than £25,000.

Capital allowances

The government is aware that arrangements are being entered into in an attempt to circumvent existing capital allowances anti-avoidance rules. The transactions affected by these changes are long funding leasebacks, connected party transactions, and transfer and subsequent hire purchases. Broadly speaking, where a person (or a person with whom they are or were previously connected) acquired an asset without incurring any capital expenditure and subsequently disposes of it via one of these methods, the new owner will be treated as having no qualifying expenditure. The new rules will not apply if the plant or machinery was acquired at an arm's length price.

Averaging of profits for farmers

Farmers are currently able to average their profits from farming over a two-year period. It is intended that this averaging period will be extended to five years from April 2016, subject to consultation. This will provide farmers with greater flexibility in controlling their level of profits for tax purposes.

Partnerships

The simplified expense regime will be amended in a future Finance Bill to ensure that partnerships can use the flat rate expenses for use of home and where business premises are also a home.

Expenditure on energy saving items by residential landlords

The Budget contained confirmation that the revenue deduction available for expenditure of up to £1,500 on qualifying energy saving items incurred by residential landlords will not be extended.

Enterprise Zones

The following Enterprise Zones will be extended:

- Mersey Waters
- MIRA, Leicestershire
- Humber
- Manchester Tees Valley (Prairie)
- Oxford Vale
- Discovery Park (subject to business case)

Subject to business cases, new Enterprise Zones will be created at Blackpool and Plymouth. Two sites at Leeds Enterprise Zone will be redesignated to include Enhanced Capital Allowances.

Corporation tax rates

The Chancellor had previously announced the gradual reduction in the main rate of corporation tax. The main rate is set to reduce to 20% from 1 April 2015 and Finance Bill 2015 will set the rate for the financial year 2016 as 20%. Therefore, the rates of corporation tax since 1 April 2010 are:

Year commencing 1 April	2010	2011	2012	2013	2014	2015	2016
Small Profits Rate	21%	20%	20%	20%	20%	-	
Marginal Relief Lower Limit	£300,000	£300,000	£300,000	£300,000	£300,000	-	
Marginal Relief Upper Limit	£1,500,000	£1,500,000	£1,500,000	£1,500,000	£1,500,000	-	
Standard Fraction	7/400	3/200	1/100	3/400	1/400	-	
Main Rate of Corporation Tax	28%	26%	24%	23%	21%	20%	20%
Marginal rate of corporation tax	29.75%	27.5%	25%	23.75%	21.25%	-	

Film tax relief

It was confirmed that Finance Bill 2015 will make two changes to the film tax relief rules.

Firstly, the distinction between limited budget films and all other films will be removed, allowing all films to be treated equally. Consequently, all qualifying films will attract the same 100% additional deduction (enhancement). Previously only limited budget films received a 100% enhancement, with just 80% enhancement for others.

Secondly, it will increase the rate of film tax relief to 25% for all qualifying expenditure incurred. The current rules only allow relief at 25% for the first £20m of qualifying expenditure, and 20% relief to amounts thereafter. The changes are subject to state aid approval and will apply to qualifying expenditure incurred on or after the later of 1 April 2015 or the date of state aid approval.

Television and animation tax relief

It was announced at Autumn Statement 2014 that the government would consider reducing the minimum UK expenditure requirement from 25% to 10% and updating the cultural test. It was confirmed today that the amendments to the existing legislation will be introduced by Finance Bill 2015.

Children's television tax relief

Television tax relief will be extended by Finance Bill 2015 to include the production of children's television programmes. Following a period of consultation, the draft legislation has been amended to include game shows and competitions.

Loss refresh prevention

New anti-avoidance legislation will come into force with immediate effect relating to the use of tax losses. The measure prevents companies from entering in to an artificial arrangement to convert brought forward losses into current year deductions, which can be utilised in a more versatile way. Trading losses, non-trading loan relationship deficits and excess management expenses are all covered by the new provisions.

Brought forward losses will not be available for use against profits arising under the artificial arrangement where all of the following conditions are met:

- profits are received by the company and those profits are unlikely to have arisen in the absence of the arrangement
- the company, or a company connected with it, is entitled to a deduction as a result of the arrangement, and
- the main purpose, or one of the main purposes, of entering into the arrangement is to obtain a tax advantage involving both the deduction and the use of the brought forward loss

The new legislation contains carve out provisions for genuine commercial arrangements, such that the rules will not apply unless the expected value of the tax advantage is greater than any other expected economic value of the arrangement.

It is the date upon which the profits are generated which is relevant to the application of the new rules, rather than the date the arrangement was entered in to.

Companies with an accounting period which straddles 18 March 2015 will be required to notionally split their profits into two periods, with the rules applying to profits arising in the notional period commencing on 18 March 2015.

Diverted profits tax

The Chancellor confirmed today that the DPT legislation will be introduced by Finance Bill 2015 and will come into force on 1 April 2015. Changes have been made to some of the draft legislation following the consultation. This includes a narrowing of the requirement to notify HMRC of chargeability to the tax and amendments to the specific exclusions from DPT.

Bank levy increase

The bank levy was originally introduced for accounting periods ending on or after 1 January 2011.

Now that many banks and building societies are beginning to return to profitability and their balance sheets are stronger, the Chancellor believes that they should make an increased contribution to reducing the UK's deficit.

Consequently, the bank levy will be increased from 0.156% to 0.21% (the rate applicable to short term chargeable liabilities), with effect from 1 April 2015. A proportionate increase will also be made to the half rate (which applies to chargeable equity and long term chargeable liabilities), from 0.078% to 0.105%.

Non-deductibility of compensation payments

Tax legislation currently allows companies to claim a corporation tax deduction for the payment of compensation to its customers. However, the Chancellor has announced that companies in the banking sector will no longer be able to claim a deduction for payments made as a result of misconduct, such as mis-selling its products.

Bank loss relief restriction

Following a period of consultation, it was announced that a change will be made to the draft targeted anti-avoidance provisions for this legislation, together with the introduction of a £25 million allowance for affected building societies.

Consultation

As part of the continuing drive to remove Extra-Statutory Concessions, the Government will consult on the practice outlined in EIM64120 which allows for the proceeds of a sporting testimonial not to be taxed as earnings of the sportsman if certain conditions are met. The current guidance can still be relied upon until April 2016

VAT

Registration and deregistration threshold

From the 1 April 2015 the following thresholds will apply: the VAT registration threshold will be £82,000; and the VAT deregistration threshold will be £80,000

Deductible VAT relating to foreign branches

Certain services are exempt from VAT, including financial services. However, when these services provided to customers outside the EU they are treated as taxable for the purposes of input tax deduction. This means the VAT on costs may be deducted. Businesses that make both taxable and exempt supplies need to complete a partial exemption calculation in order to determine the amount of recoverable VAT incurred on overhead costs. Until now, this has meant there was a risk of a business artificially increasing the amount of input tax it is entitled to deduct by over-allocating overhead costs to its non-EU foreign branches. The government considers that under the current system businesses could manipulate their deductions. As a result, the government has announced that it will no longer allow businesses to take into consideration any overseas branches when calculating the amount of input tax that can be recovered on general overheads on the UK VAT return. This measure will only have an impact on partly exempt businesses who have overseas branches as they will need to implement changes that exclude their branches from their partial exemption calculation from the beginning of their partial exemption tax year falling on or after 1 August 2015. This measure is intended to take effect on or after 1 August 2015. However, if 31 July 2015 falls within the VAT longer period of accounting for a business, it will not have effect until the first day of the next longer period that applies to that business.

The proposed amendments will make it clear supplies made from establishments outside the UK cannot be taken into account by businesses using the standard method and also:

(a) exclude supplies made from a foreign establishment from being included in a special method

(b) restrict the use based calculation for foreign and specified supplies to supplies that are made from establishments within the UK

(c) mean deduction of input tax on overheads used to support activities of the foreign establishments of a business can only be calculated by reference to supplies made by that business

Palliative care charities

The government has announced a new VAT refund scheme for palliative care charities which will enable them to reclaim VAT incurred on purchases made to support non-business activities.

Where the cost of providing care by these charities is met from voluntary donations and public funding, rather than from fees charged, this is generally not regarded as a business activity for VAT purposes. The VAT charged on purchases for the purpose of their non-business activities is therefore a cost to palliative care charities. The proposed new measure will have effect in relation to supplies made, and acquisitions and importations taking place, on or after 1 April 2015. The new legislation will be contained in VATA 1994, sections 33C and 33D.

Blood bikes

With effect from 1 April 2015, the VAT refund scheme (VATA 1994, s33) will be extended to include blood bike charities together with search and rescue and air ambulance charities (previously announced in Autumn Statement 2014). . A new VAT refund scheme will enable these charities to reclaim VAT incurred on purchases of goods and services, and the acquisition and importation of goods from outside the UK used for non-business activities. The new legislation will be contained in VATA 1994, ss 33C and 33D.

VAT Refunds for shared services

The government intends to enact changes that enable non-departmental public bodies to reclaim VAT under the VATA 1994, s33 VAT refund scheme with effect from 1 April 2015. Please see the S33 bodies — overview guidance note for more information on the scheme