

Personal tax round up

(Lecture P1126 – 15.11 minutes)

Company cars – latest advisory fuel rates

HMRC has published revised advisory fuel rates for company cars, applying from 1 March 2019. The previous rates can be used for up to one month from the date the new rates apply.

Engine size	Petrol - per mile	LPG - per mile
1400cc or less	11 pence	7 pence
1401cc to 2000cc	14 pence	8 pence
Over 2000cc	21 pence	13 pence

Engine size	Diesel
1600cc or less	10 pence
1601cc to 2000cc	11 pence
Over 2000cc	13 pence

The rates are to be used only where employers either reimburse employees for business travel in their company cars, or require employees to repay the cost of fuel used for private travel.

Hybrid cars are treated as either petrol or diesel cars for this purpose.

The advisory electricity rate for fully electric cars is 4 pence per mile.

www.gov.uk/government/publications/advisory-fuel-rates

Leased cars and fuel card payments

Summary – Leased cars and fuel card payments for private fuel provided to directors were not benefits in kind as they were effectively paid for in full via debits to the directors' loan accounts.

Paul Harrison and Lee Solway were both directors and each owned 50% of the shares in Harrison Solway Logistics Ltd, a haulage company.

In May 2013 HMRC looked into the company's employer records that included details of company cars. In July 2013 HMRC were told that there were no company cars, but that the directors had leased cars the costs of which were paid by direct debit and taken to their loan accounts. The directors also had a fuel card, which they used when they filled their private cars, and the cost of these cards was also taken to their loan accounts.

The directors appealed against HMRC's decision that for the tax years 2010/11 to 2013/14:

- cars leased by the directors were company cars under s.114(1), ITEPA 2003 as they were made available to the directors by reason of their employment and without any transfer of the property in them and they were available for private use; there was no transfer of proprietary interest in the cars as it was Harrison Solway Logistics Ltd which entered into the leasing agreements and the cars always remained the property of the lessor;
- company fuel cards given to the directors were taxable as benefits under s.150 ITEPA 2003 as the directors did not reimburse the company for their private fuel.

Harrison Solway Logistics Ltd appealed against HMRC's decision that Class 1A charges were due on the car and fuel benefits as well as penalties for the failure to deliver P11Ds for benefits provided to the directors.

In Harrison Solway Logistics Ltd's view:

- there was an oral and implied arrangement between the company and directors in respect of the vehicles leased by the company, under which property had passed to the directors so that s. 114(1)(a) ITEPA 2003 was not satisfied. All costs in respect of the vehicles had been borne by the directors through their directors' loan accounts, so there had been no provision of a car benefit;
- all fuel costs were met by use of directors' loan accounts;
- The directors received no overall financial benefit having met the full cost of the vehicles on commercially available terms. Debits on an overdrawn loan account represent payments as the loan account represents an enforceable debt and was not different to any other loan.

Decision

The First Tier Tribunal said they could see no reason for not taking the directors' loan accounts debits into account as these were the amounts of the hire purchase and rental payments made by Harrison Solway Logistics Ltd to the leasing companies. The directors were effectively leasing the cars giving them the right to use them for business or private use. There was no benefit and so s.114 ITEPA 2003 did not apply. The same applied to the fuel cards.

As there was nothing to be charged to income tax in relation to cars and fuel, no income tax and interest was due. Had the cars and fuel been the only 'benefit' to consider no Class 1A or penalties for failing to file a P11D(b) in time would have arisen either. However, there were other benefits accruing to the directors from BUPA subscriptions etc, which had not been reported.

In summary, the income tax appeals were allowed with the Class 1A NICs appeals allowed in part.

Mr Paul Harrison, Mr Lee Solway & Harrison Solway Logistics Ltd V HMRC (TC06956)

Insurance premium payments

Summary – The payment of insurance premiums by the company did not represent earnings from the employment of its director.

William Mitchell was the sole director and shareholder of Macleod and Mitchell Contractors Limited.

The company paid insurance premiums on several insurance policies where, until 2013, both the company and William Mitchell understood that the company was the policyholder, Mr Mitchell was the insured person and that the company would be the party that would benefit from any insurance proceeds. Having discovered that this was not the case, and that an error had been made, Mr Mitchell assigned the policies to Macleod and Mitchell Contractors Limited in 2014.

In the period up to the assignment, HMRC assessed Mr Mitchell to income tax in respect of the premiums paid and the company was assessed to pay primary and secondary class 1 national insurance contributions.

Macleod and Mitchell Contractors Limited and Mr Mitchell appealed to the First Tier Tribunal who accepted that a mistake had been made. However, as Mr Mitchell was the policyholder, the Tribunal held that the premium payments had relieved him of pecuniary liabilities to the insurers, so that the payments were earnings under s62 ITEPA 2003.

Decision

The Upper Tribunal considered whether the payment of the premiums by the company conferred a profit or benefit upon Mr Mitchell that derived from his employment and so was taxable as general earnings.

Referring to the test in *Tyrer v Smart*, they said that the test ‘is whether the benefit represents a reward or return for the employee’s services, whether past, current or future, or whether it was bestowed on him for some other reason...’.

In their opinion, the Upper Tribunal found that the First-tier Tribunal had erred in law and had failed to focus correctly on the critical questions - whether there was any real benefit to Mr Mitchell from the payment of the premiums; and if there was, whether it arose from his employment.

They concluded that “the premium payments were very clearly not earnings from Mr Mitchell’s office or employment.....they were bestowed upon him for some other reason”. The premiums were paid to benefit Macleod and Mitchell Contractors Limited, not Mr Mitchell. They were made on the erroneous understanding that Macleod and Mitchell Contractors Limited was the policyholder and that it would be the beneficiary of any policy proceeds.

The same analysis applied in relation to the national insurance contributions.

Macleod and Mitchell Contractors Limited William Mitchell v HMRC [2019] UKUT 0046 (TCC)

Pension contributions paid for employee

Summary - The taxpayer was not careless in claiming relief for pension contributions on his tax return as these were his contributions paid by his employer on his behalf.

Adrian Omar had been given advice by pension providers that contributions he made to his pension schemes would be tax deductible. He subsequently paid contributions into his pension.

Mr Omar's income consisted of a basic salary plus variable bonuses. The bonuses between 2008 and 2014 varied between £60,000 and £20,000. His (somewhat hazy) recollection was of making lump sum contributions of some £8,000 in 2011/12 and £5,000 in 2010/11 and of asking his employer to pay part of his bonus in making these payments.

Mr Omar's payslips showed gross income followed by deductions for national insurance and tax to give net income. From that, pension payments were deducted to give the net sum that was paid to him. To obtain the sum that he entered in his tax return for pension payments he summed the amount of the pension payments shown on those payslips.

However, the pension fund's summary of the transactions included a payment of £8,018 described as "... employer's single contribution". Mr Omar did not use this summary to complete his tax returns but HMRC used this as evidence that Mr Omar had claimed too much relief on pension contributions.

Section 188 ITEPA provides that an individual who is an active member of a registered pension scheme is entitled to relief in respect of pension contributions paid during the year, but that such contributions do not include -

"(3)... (b) any contributions paid by an employer of the individual ..."

HMRC argued that Mr Omar had included in the figure in his return for pension contributions amounts contributed by his employer. This was evidenced in 2011/12 by the description in the pension fund statement of £8,018 as being his employer's single contribution. The payments made by his employer were not deductible. It was careless to have put them in the return. HMRC issued assessments on the basis that Mr Omar had claimed excessive deductions.

Decision

The First Tier Tribunal disagreed with HMRC's view that Mr Omar had been careless. He had acted on the advice of experts and there was no additional requirement to look at HMRC's material.

Mr Omar's evidence was that the £8,108 amount was shown on his payslip as a deduction from his after-tax income. If that was right, then it was correct to treat it as a sum paid by him and not by his employer.

On balance the Tribunal did not find that the statement from the pension fund was adequate to convince them that it was more likely than not that the £8,018 payment had not been made on behalf of Mr Omar rather than “by” the company: given that regular payments were made by deduction from Mr Omar’s net income and paid through the company, it seemed quite possible that the pension fund had wrongly assumed that a large payment coming from the company was a payment by it rather than a payment on behalf of Mr Omar.

The Tribunal found that it was not shown by HMRC that the return had been incorrectly completed, and as a result that it was not shown that Mr Omar had been careless.

Adrian Omar v HMRC (TC06962)

Petrol services – Directors or consultants

Summary – The services that were provided were what directors of a close company would be expected to perform and so were taxable as remuneration with tax and NICs collectable through PAYE.

Petrol Services Limited had two directors, Mr Odedra and Mr Badiani, who together with their wives had been 25% shareholders since July 2007.

The company ran petrol stations but had no employees. The company operated by letting out the shops and car wash at the petrol stations to tenants who paid rent in return but also collected payment for the fuel on behalf of the company.

The directors were not paid any remuneration. Under separate consultancy agreements the directors were required to work up to 15 hours a week in exchange for a fixed amount each month. The directors usually worked together buying petrol, settings prices, collecting takings/rent, inspecting the premises, insuring the business, arranging repairs, and conducting occasional rent reviews/applications which usually amounted to between 20-40 hours of work each week.

HMRC argued that the directors had a contract of services and so should have been liable to income tax and NICs collected by Petrol Service Limited under PAYE. HMRC supplied third party notices showing that the directors had contracted with the company’s suppliers in their capacity as officers of the company and not as contractors.

The two directors claimed they had a contract for services that was separate to their directorships and taxable as the income relating to their respective businesses.

Decision

The Tribunal said that it is possible for an individual to have his own independent business while also having the office of director of a company, but in their experience this does not normally occur where the individual is a competitor of, or in the same line of business as, the company as appears to have been the case here. The services that were provided were what directors of a close company would be expected to perform. The Consultants provided no additional services. The payments were effectively remuneration that should have been processed through PAYE. It did not matter that the remuneration was paid to the directors’ businesses; it was still taxable on them. The appeal was dismissed

Petrol Services Limited v HMRC (TC06907)

Avoiding CGT on shares

Summary – A scheme designed to avoid CGT on the disposal of shares failed under the Ramsay principle, as it should be viewed as a single composite transaction, namely the disposal of quoted shares at or about market value by the original trustees.

Back in October 2017 we reported on the Upper Tribunal's decision in this case where trustees had disposed of listed shares using a tax avoidance scheme.

Scottish trustees held shares representing about 2% of AWG Plc that at the time had a combined market value of around £14.5m. If sold, CGT would be payable of around £3 or £4 million.

The scheme involved the setting up of trusts in Ireland, The Irish trustees granted put options entitling the Scottish trustees to sell the AWG shares at base cost plus indexation; this would realise cash totalling nearly £4.5m. The Scottish Trustees would not incur any CGT as under s144ZA TCGA 1992 as the disposal was through the exercise of an option the market value rule would be dis-applied. Having exercised the options, the shares were then sold by the Irish trustees to Merrill Lynch; this realised a total of just over £14m net for the Irish trusts with the trustees incurring an Irish CGT liability of around €54,000. Finally, the Irish Trustees retired and were replaced by the same persons who held the office of Scottish Trustees, the Irish Trusts were thereby repatriated to the UK.

Both the First Tier and Upper Tribunal held that, viewed realistically, the case involved a single composite transaction, namely the disposal by the Scottish trustees of the AWG shares to the market at or about market value. The intermediate steps had been artificially inserted for tax avoidance purposes. Accordingly, HMRC were correct to view the arrangements as a single disposal. CGT had not been avoided.

Decision

The Court of Appeal agreed with the First Tier and Upper Tribunal in finding that the overall scheme had been pre-ordained to produce a given result and those events did in fact take place.

They concluded that 'In the present case, where the asset comprised a shareholding in a quoted company, nothing of any significance needed to be done by [the disposal date], for a rapid sale in the market to be achieved.'

The Ramsay approach was in point and the Scottish Trustees should be regarded as having effected a "disposal" of the AWG shares to Merrill Lynch within the meaning of the TCGA. The scheme, which had been designed to avoid CGT on the disposal of the shares, failed.

The appeal was dismissed.

Trustees of the Morrison 2002 Maintenance Trust + others v HMRC, CA [2019] EWCA Civ 93.

Assets held in trust?

Summary – The taxpayer held the funds in the bank accounts as trustee on bare trust for her parents-in-law and was not taxable on the income and gains arising.

Lily Tang was an NHS midwife who was a basic rate taxpayer paying tax on her salary under PAYE.

However, she held over \$900,000 in bank accounts in London and then later in accounts in Asia. She was the legal owner of the funds; she had control over the monies and was entitled to give instructions to transfer them to another account and to make currency trades. She had transferred the funds back to her parents-in-law in 2017.

She argued that she was holding the money for her Hong Kong resident parents-in-law. As bare trustee, she believed that she had no personal tax liability in respect of these funds and so no need to complete a tax return.

By contrast, as there was no trust document, HMRC considered that the funds belonged to her and raised discovery assessments accordingly.

The issue was therefore whether a trust existed.

Decision

The First Tier Tribunal understood that Lily Tang lived with her husband in a house bought for £73,000 with a mortgage and that she worked nightshifts to enable the couple to look after her children as childcare was expensive. This was inconsistent with her having access to \$900,000 at her disposal which she did not spend.

The Tribunal disagreed with HMRC and said that a trust does not need to be in writing and may be made orally. They referred to a statement prepared by BDO that detailed how the money had been transferred to Mrs Tang as legal owner only with her parents-in-law as the beneficial owners. The Tribunal concluded that, on balance of probabilities, Lily Tang did hold the funds as trustee on bare trust.

As neither the income nor gains belonged to her, she was not taxable on them and was not required to notify them to HMRC.

Lily P Tang v HMRC (TC06965)

SDLT on dilapidated bungalow Lecture

Summary – The property was not suitable for use as a dwelling at the time of purchase and so higher SDLT rates did not apply.

Mr Bewley had bought a bungalow that had not been occupied for a couple of years and was described in a survey as being in poor state of repair and requiring demolition due to asbestos. A planning application made it clear that the existing building was to be demolished and replaced with a new building.

At the date of completion HMRC sought to collect the higher rate of SDLT for additional residential properties under FA 2003, Sch 4ZA, Part 1) but the taxpayer disagreed and appealed.

Decision

The Tribunal accepted that the dilapidation did not necessarily prevent it from being a dwelling but added that the test was whether the property was 'suitable to be used as a dwelling at the time of purchase', and not 'whether it was capable of becoming so used in the future'. The planning permission was therefore not relevant.

The First-tier Tribunal stated that 'No doubt a passing tramp or group of squatters could have lived in the bungalow as it was on the date of purchase but, referring to HMRC's own Guidance Note (16 March 2016) to be suitable to be used there was a need for 'facilities required for the day-to-day private domestic existence.' These facilities were not present on the completion date. Additionally, given the state of the building, with the presence of asbestos preventing any repairs or alterations, the Tribunal found that the bungalow was not suitable for use as a dwelling.

The higher rate, on purchases of additional residential properties, did not apply.

The appeal was allowed

P N Bewley Ltd v HMRC (TC06951)