

## Personal tax round up (Lecture P1366 – 19.31 minutes)

### Cars “made available”

*Summary – Despite being untaxed and with the company possessing a declared statutory off-road notification (SORN), a company’s cars were found to be made available to its director making them taxable benefits in kind.*

Tim Norton Motor Services Limited operated a Ford car dealership selling new cars, buying and selling second-hand cars and undertaking some repair work.

The dealership owned a Maserati and Ford GT40. When the director, Tim Norton, desired to use either car, vehicle excise duty would be paid before it was used and then after use a SORN (statutory off-road notification) would be made.

In 2016, following a PAYE audit, HMRC concluded that these cars had been ‘made available’ to its director, Tim Norton, and issued:

- NIC determinations for the years 2010 to 2017;
- income tax assessments for the years 2012/13 to 2014/15 and 2016/17, and a closure notice for 2015/16.

The First Tier Tribunal found that, as a result of the relative ease of removing SORN status, the cars were still available to Tim Norton, even when no Vehicle Excise Duty (VED) had been paid. The Tribunal dismissed the taxpayers appeals in relation to the years 2013/14 onwards and allowed them for earlier years in respect of one of the cars.

On appeal to the Upper Tribunal, the taxpayers argued that the First Tier Tribunal had erred when it considered that the cars were available for private use at times when no VED was in place. Further, Tim Norton argued that the 2016/17 discovery assessment had not been validly issued.

### *Decision*

The Upper Tribunal confirmed that the First Tier Tribunal had been entitled to find that, despite the existence of a SORN and no VED, this was not ‘an effective restraint upon their use and the cars were thus available for private use’. As director of the company with sole access to the car keys, Tim Norton could easily revoke the SORN, pay the VED and gain legal access to drive the cars.

However, the Upper Tribunal agreed with the taxpayers that the discovery assessment for 2016/17 was invalid. The assessment had been made during the enquiry period, meaning that it could not satisfy s.29(5) TMA 1970. This requires that when a tax return has been submitted, HMRC cannot to be aware of an insufficiency of tax before the enquiry window closes as they might become aware of an insufficiency after the assessment was issued but before the enquiry window had closed.

*Timothy Norton and Tim Norton Motor Services Limited [2023] UKUT 48 (TCC)*

## **Domicile of origin, dependence and choice**

*Summary – Born to an Austrian father and Irish mother, the taxpayer's domicile of both origin and dependence was the UK. Further, his domicile of choice would also have been the UK.*

Jeremy Collier submitted his tax returns on the basis that he was non-UK domiciled and so eligible for the remittance basis.

HMRC disagreed and, following an enquiry, issued closure notices for the tax years ended 5 April 2013 to 5 April 2016 on the basis that he was domiciled in England during this time and so taxable on the arising basis.

This appeal provides us with a useful refresher of how an individual's domicile is determined. In reaching their decision, the First Tier Tribunal considered his domicile, as well as that of his father and his mother.

In summary:

- His father was an Austrian Jew who fled Austria during WW2 and came to England where he spent the rest of his life;
- His mother was born in Ireland but lived in England from 1953;
- Jeremy was born in England and lived here all his life.

The First Tier Tribunal had four issues to determine and stated that if HMRC succeeded with any one of those issues, the appeal would be dismissed.

Issue 1 - When Jeremy was born on 17 May 1958, had his father acquired an English domicile of choice, making Jeremy's domicile of origin England?

Issue 2 - Alternatively, when his father died in August 1968 had he acquired an English domicile of choice, meaning that Jeremy had an English domicile of dependency, which became an English domicile of choice when he ceased to be a minor on 17 May 1974?

Issue 3 – Alternatively, if his father had not obtained an English domicile of choice by his death, had his mother acquired an English domicile of choice after his death in August 1968, so that Jeremy had an English domicile of dependency, which became an English domicile of choice when he ceased to be a minor on 17 May 1974?

Issue 4 – Alternatively, if Jeremy had an Austrian domicile of origin that remained unchanged until he turned 16, had he later acquired an English domicile of choice before his claims for the remittance basis in April 2012?

### *Decision*

The First Tier Tribunal found that by the time that Jeremy was born, his father had acquired a domicile of choice in England which continued to his death. He had severed all ties with Austria and lived in England with his wife and children. Although he enjoyed holidaying in France, there was no evidence of his intention to move overseas. This was a 'pipe dream'. On issues 1 and 2, Jeremy's domicile of origin was England.

Although not necessary, the Tribunal moved on to consider issue 3. By the time that Jeremy was 16, his mother's domicile of choice was in England where she raised her children, married again in her fifties and later died. Had the Tribunal not already concluded that he had an English domicile of origin, Jeremy would have acquired an English domicile of dependency from his mother.

The First Tier Tribunal did also consider issue 4. Jeremy Collier owned property in the UK where he had lived all his life. He had married in England and raised his family there. Having applied for Israeli citizenship, he claimed that he was domiciled in Israel. However, this intention was only planned after his divorce in 2012. Properties outside the UK were only bought from 2013. The Tribunal concluded that, if prior to April 2012 he had acquired a domicile of origin outside the UK, Jeremy Collier would have acquired a domicile of choice in the UK.

*Jeremy Collier v HMRC (TC08738)*

### **No EIS certificates**

*Summary – EIS claims by the taxpayer were denied as the taxpayer's adviser had been careless by not checking that the required EIS3 certificates had been received.*

Dr Rizvi had subscribed for shares in five companies, claiming EIS relief in 2014/15 to 2016/17 but without holding the required EIS3 compliance certificates (s.203(1) ITA 2007). Dr Rizvi did not dispute that he was not entitled to make the claims for EIS relief.

On 12 March 2021, HMRC raised discovery assessments but Dr Rizvi argued that these were out of time, making them invalid.

HMRC argued that the assessments were in time on the basis that Dr Rizvi, or someone acting on his behalf, had been careless.

#### *Decision*

The First Tier Tribunal found that the taxpayer had not acted carelessly. It was reasonable for him to rely on his long term, well-qualified adviser who had acted in the role of his adviser since 2003, without issue.

However, the First Tier Tribunal found that his tax adviser, acting on his behalf, had acted carelessly by not checking that the correct certificates had been obtained. The Tribunal stated:

“To allow a client to make a claim for EIS relief without making sure that the client held a valid EIS3 is carelessness of a high order”.

The appeal was dismissed and discovery assessments for almost £255,000 were upheld.

*Dr Syed Akhlaq Rizvi v HMRC (TC08731)*

### **Film rights' Minimum Annual Payments**

*Summary – The taxpayer was entitled to the minimum annual payments which were taxable income from the film business in which the taxpayer was participating.*

Thomas Good entered into a tax avoidance scheme whereby a 'trade' was set up and he entered into a series of transactions to purchase, enhance, exploit and sell film distribution rights worldwide. He bought the rights using £300,000 of his own money, with the remaining investment funded by a six-year loan from Scion Structured Products Ltd, the scheme operators.

Under the scheme, investors were entitled to a minimum annual payment (MAP) which was intended to cover the interest payable on the loan. Under the scheme, Thomas Good assigned his rights to the MAP income to the lender. The scheme provider claimed that the MAP income and interest payable would be netted off for tax purposes.

It was anticipated that in the early years of the scheme, trade losses would be incurred and that these losses would be available for sideways loss relief. However, HMRC stated that the scheme did not work as the losses were not trading losses. HMRC issued discovery assessments, disallowing the deductions for loan interest payments and so collecting the income tax due on the MAPs sums received.

By the time of the Court of Appeal hearing, it was accepted that the scheme did not work. The losses generated were not trading losses and so were not available for sideways relief. The interest payments were not tax deductible.

However, Thomas Good argued that as he had assigned the MAPs payments to the scheme provider, the right to receive that income was not his, he derived no benefit from the payments and the sum was not taxable on him.

#### *Decision*

The issue to be decided was whether the MAPs represented income from the non-trade business of exploiting films taxable under s.611 ITTOIA 2005. The Court of Appeal confirmed that s.611 ITTOIA 2005 states that a liability to tax will arise on any person 'receiving or entitled to the [film] income'.

The Court of Appeal found that the person who received and the person entitled to the income could be two different parties, with the anti-avoidance legislation designed to catch those involved in film scheme arrangements.

Thomas Good was entitled to the MAP payments but benefitted by assigning the MAPs to settle the loan interest that was due. Further, once the loan was paid off, Thomas Good had a right to redeem his rights to the MAPs-related income. Based on the economic and commercial reality of the scheme, the appeal was dismissed.

In concluding, the judge stated:

"The rejection of this appeal will be very bitter for the taxpayer. Not only has he lost his initial investment of £300,000 in the scheme, but in addition he is liable to income tax on income which he never himself received; the tax bill is around £180,000 for the three years of the scheme so far considered by HMRC, with enquiries into two other years remaining open. Financially, the taxpayer's investment in the scheme has been disastrous. But that cannot affect the interpretation and application of the statute.'

*Thomas William Good v HMRC [2023] EWCA Civ 114*

## **Property occupied for 10 days**

*Summary – A property that was lived in for just ten days was not the taxpayer’s only or main residence as prior to moving in, he had already decided that his long-term home was a flat located in a different area.*

Benjamin Cohen, an osteopath, had invested in several properties with his father. He lived with his parents in Essex.

In July 2018, he bought a London property in need of renovation. He moved into the property on 29 August 2018, the day after work was completed and remained living there for ten days. During this time, he moved his clothes into the property, slept there and entertained friends.

Having decided that he would prefer to live in a new build flat in a different area, on 25 October 2018 he sold this first property to his parents and completed his purchase of the new flat on 30 October 2018 for £501,500.

He submitted a Stamp Duty Land Tax return which did not include any charge to higher rate tax as he was treated the flat as a replacement for the property that he had lived in for the ten days as his only or main residence.

HMRC opened an enquiry, and later concluded that the higher rate of SDLT was due.

### *Decision*

The First Tier Tribunal found in HMRC’s favour concluding that Benjamin Cohen had decided to buy the new flat before moving into the first property. Correspondence confirmed that he paid a holding deposit on the flat in mid-August and that he “had made a mistake” and did not want to live in the first property. As a result, when he moved in to the first property, the property was never his only or main residence and living there temporarily for just 10 days supported this finding. The first property was not his permanent home.

The higher rate of SDLT was therefore due on the purchase of the flat as it was not the replacement of an only or main residence.

The appeal was dismissed.

*Benjamin Cohen v HMRC (TC08718)*

## **Negligent tax advice not time-barred**

*Summary – A claim arising from negligent advice was not time-barred despite being brought some 12 years after the advice was given.*

In 2009, following advice given by Speechly Bircham LLP, RBC Trust Company established a Non-resident trust on behalf of Stephane Etroy, a UK resident, non-domiciled Individual.

In September 2018, following an investigation by PwC, the advice that had been given was found to be wrong, leading to additional IHT liabilities of more than £1million.

Stephane Etroy instructed lawyers and in May 2021 a claim was made against the LLP.

Both parties agreed that the advice had been wrong but, as the advice was provided more than six years before the claim was made, Speechly Bircham LLP argued that the claim was time-barred.

### *Decision*

The High Court confirmed that ordinarily the six-year time limit applied but for a negligence claim, there is an additional three-year period.

This additional period starts from when the claimant obtains both the knowledge:

- of the material facts relating to the damage;
- that the damage was attributable to the negligence.

The High Court confirmed that the required knowledge only arose in September 2018 when PwC reported their findings (at the end of their 18-month investigation). It was only at that time that Stephane Etroy knew that a claim was serious enough to pursue.

With the three-year period starting in September 2018, the claim raised in May 2021 was in time.

*Stephane Etroy and RBC Trust Company (Jersey) Limited v Speechly Bircham LLP [2023] EWHC 386 (Ch)*

### **Payrolling benefits from April 2023**

From 6 April 2023, HMRC will no longer accept new informal payrolling benefits arrangements. Employers must register now to payroll benefits for the next tax year.

Where an employer already has an informal agreement for 2022/23, they can continue to submit P11Ds marked 'Payrolled' but must formalise this agreement as soon as possible.

<https://www.gov.uk/government/publications/employer-bulletin-february-2023>

### **Official rate of interest**

The official rate of interest (ORI) is increasing to 2.25% per annum from 6 April 2023.

[www.legislation.gov.uk/uksi/2023/216/made](http://www.legislation.gov.uk/uksi/2023/216/made)

### **Extension to the NIC top up window**

Entitlement to the state pension, and other benefits can be detrimentally affected where a taxpayer does not have enough full years of NICs to their name.

To fill those gaps, it is normally possible to make voluntary contributions in the current tax year to top up gaps for the past six tax years.

With the introduction of the new State Pension, the Government introduced a transitional arrangement, extending the six-year period, and allowing individuals to fill up any gaps in their NIC record between April 2006 to April 2016 by 5 April 2023.

Apparently, HMRC and DWP have experienced a surge in customer contact and so to ensure that people do not miss out, the government has now announced that this deadline has been extended until 31 July 2023. Contributions during this extended period can be made at the 2022/23 voluntary NI rates of £15.85 per week.

*<https://questions-statements.parliament.uk/written-statements/detail/2023-03-07/hcws608>*