

Business tax round up

(Lecture B1146 – 19.23 minutes)

Non-resident corporate landlords

As previously reported, from 6 April 2020 non-resident companies with income from UK property will no longer be liable to income tax but will instead be subject to corporation tax. It will be important that steps are put in place well in advance of April 2020, in order to ensure companies are not caught out by the transition to corporation tax. Some of the main action points to be considered are outlined below:

Non-resident companies must register for corporation tax (even for those companies that are already registered with HMRC under the non-resident landlord scheme). Existing agent authorisations will not carry over so agents must reregister for each non-resident company.

For 2019/20, two tax returns will be completed (one income tax and one corporation tax) as well as the need to file iXBRL tagged accounts. Budgeting for these changes will be important.

Where the annual net interest costs are expected to be £2m or more, either in the non-resident company or across the wider UK group, it will be important to assess any potential disallowance under the corporate interest restriction rules. Where a disallowance is expected, it might be necessary to consider how funding has been structured around the group and if certain loans should be capitalised.

Where the non-resident company (or the wider group) has or is expected to have more than £5m of losses carried forward in periods from April 2020, it will be necessary to consider the potential restrictions on the use of the losses. In addition, the group allowance allocation statement will need to consider the non-resident company as part of the wider group exercise.

Non-resident companies will become subject to the corporate anti-hybrid rules from 6 April 2020. As a result, it will be important that a review of the entities and financial instruments involving the non-resident company are carried out. If a tax mismatch arises (for example, where a financial instrument is treated as equity in one jurisdiction but as debt in another), tax relief may be restricted. See the Cross-border financing guidance note for further details

Adapted from summary produced by Tolley (8 July 2019)

Latest GAAR advisory panel opinion

Summary – Entering into and carrying out the tax arrangements was not a reasonable course of action in relation to the relevant tax provisions.

A close company and its majority shareholder/director jointly acquired an offshore bond for £272,500, the director contributing £1,000 and the company contributing £271,500.

The director then entered into a gilts option with a third-party counterparty, under which the director was entitled to a premium of £250,000 with a 5% risk of having to make a £5m gilt settlement to the option purchaser on expiry.

The option expired without requiring payment in settlement and the director became entitled to the £250,000 premium.

The bond manager entered into a hedging mirror option.

The mirror option expired, paying the premium of £250,000, which reduced the value of the offshore bond to nil. The company's assets were correspondingly reduced by £271,500.

Opinion

The panel summed up the overall result of the arrangements in the following terms:

- the director paid out £1,000 for his share in the offshore bond and received £250,000 in the form of a premium under the option; and
- the company's assets reduced in value by £271,500, representing the price it paid for its share in the offshore bond which became worthless as a result of the arrangements.

The shareholders had not taken any material financial risk and the company had not been in a position to make a profit. The purpose of the arrangements was the extraction of value by the shareholders from the company, the most likely comparable commercial transaction being a dividend or other cash distribution of £250,000.

www.gov.uk/government/publications/gaar-advisory-panel-opinion-of-28-may-2019-extraction-of-value-using-a-second-hand-bond-gilt-options-additional-contributions-and-cooling-off-right

The timing of claims for capital allowances

In Dundas Heritable the UT found that the opening of enquiries into two returns had 'cured' the fact that the returns contained claims for capital allowances that would otherwise have been out of time.

Dundas operated public houses. The filing date for the company's tax return for the period to 31 March 2012 was 31 March 2013. The return was received by HMRC on 3 February 2015. The filing date for the company's tax return for the period to 31 March 2013 was 31 March 2014. The return was received by HMRC on 26 November 2015. Both returns contained claims for capital allowances. Both claims were therefore submitted more than 12 months after the relevant filing date and so after the date specified in FA 1998 Sch 18 para 82(1)(a). HMRC had opened enquiries into both returns and the company contended that the claims had been made on time; before the date specified in para 82(1)(b) (30 days after completion of the respective enquiries), and therefore during the time up to whichever was the last of the dates listed in para 82(1).

HMRC's argument was that there could not have been an enquiry if there had not been a return, and a claim for capital allowances had to be made in a return. FA 1998 Sch 18 para 82(1)(a) was the core provision (i.e. the first anniversary of the filing date for the company return) and the claims were outside that period.

Agreeing with Dundas, the UT found that: 'The words of para 82(1) are clear and unambiguous: a claim for capital allowances may be made at any time up to whichever is the last of the four dates specified in subparagraphs (a), (b), (c) and (d).' The tribunal also referred to *Stock v Franck Jones* [1978] 1 WLR 231 as authority for the proposition that: 'The existence of anomalies, if they exist, cannot limit the meaning to be attached to clear language in a statute.' The tribunal also observed that para 82(4) did contain a specific exception, which suggested that Parliament had not seen fit to provide for any other exception.

HMRC v Dundas Heritable Limited [2019] UKUT 208

Memory cards connected to fraud

Summary – The purchase of SD memory cards did not fall foul of the MTIC fraud rules and so input tax was recoverable.

Beigebell Limited was registered for VAT from 22 July 2010. The company normally supplied promotional merchandise, such as stickers, bags, T shirts, note books and mouse mats to companies such as McLaren, Triumph Motorcycles, Channel 4 and The Ritz.

The VAT period 10/15 showed an outputs figure for the quarter that was more than double any other quarter in the previous three years and the inputs figure was likewise significantly higher than that in previous quarters. Between 1 September 2015 and 8 September 2015 Beigebell Limited made six purchases of memory cards from a single supplier and sold these on in five deals to Hi View Trading.

HMRC denied the company £144,000 of input tax, believing that the company's transactions in memory cards were connected with fraud, and the company ought to have known of that connection.

Beigebell Limited stated that they did not normally trade in memory cards; it argued that, although there was a defaulting supplier in the chain, this supplier was not connected to Beigebell Limited and they had not been fraudulent. Until HMRC's visit, Beigebell Limited had no knowledge of MTIC fraud. The director who signed the deals admitted that, after the completion of the initial deals, he did not feel comfortable and had refused later offers.

Decision

The Tribunal concluded that the 'no other reasonable explanation' test was not met. Having examined the purchase history for the memory cards, the Tribunal understood that the deal had been put forward by an old friend who had given:

- the company genuine and profitable business in the past;
- plausible explanations for the arrangements.

The Tribunal concluded that the director had been naive but ultimately, he was a man with sound moral standards.

The appeal was allowed.

Beigebell Limited v HMRC (TC07163)

New build, demolition and reconstruction

Summary - The Glasgow School of Art could not recover input tax incurred on a building let to its students' union. The original invoicing arrangement reflected the economic and commercial reality of the project.

The Glasgow School of Art is a Higher Education Institution Art School specialising in fine art, design and architecture.

Between 2011 and 2014, the school demolished two buildings, partially demolished and then reconstructed the Student Union Assembly Building, and also constructed a new building, called the Reid Building.

As the construction of the two buildings was tendered as a single construction contract, during the period of construction the contractor invoiced monthly with the combined cost, and charged VAT. In 2011 the contractor produced a one-page summary of the costs divided between "New Build" and "Assembly Building". The VAT on the costs had initially been treated as residual, and had recovered it according to an agreed combined partial exemption special method that had operated since August 2009.

The Art School argued that the two buildings should be regarded as separate buildings, that the Assembly Building was being used wholly for taxable purposes by leasing it to the Student's Union. The input tax on the costs attributable to the partial demolition, reconstruction and refurbishment of the Assembly Building ought to have been treated as fully recoverable. They sought and obtained from the contractor separate invoices identifying the costs of the Assembly Building works, along with credit notes covering the previously issued (and paid) invoices relating to the whole project.

There were two issues:

1. Did the works carried out on the Assembly Building constitute a separate supply. If one supply, the input tax would be residual but if two separate supplies, then....
2. Was the input tax incurred in relation to the Assembly Building supply recoverable on the basis that the school was making taxable supplies, by leasing the VAT opted building, to the students' union?

The Assembly Building retained its original facades on three sides and the roof. Following the redevelopment, it shared a party wall with the new Reid Building, which wrapped around and above the Assembly Building, but at one end it rested on the Assembly Building. The only common facilities for the two buildings were the sprinkler and air handling systems that were centralised in the Reid Building, and the heating that was centralised in another nearby building together with that for other premises.

Decision

The Upper Tribunal concluded that the:

- economic and commercial reality of the construction contract was a single development of the site as a whole. Although the Art School wanted and obtained two separate premises with different functions, there was a single delivery strategy with a single contract with invoices issued for the whole project;
- lease and facilities were provided as part of the school's necessary support of the Union at well below market value and so not as an economic activity;
- school was not making taxable supplies to the Student's Union.

The taxpayer's appeal was dismissed.

Glasgow School of Art v HMRC, [2019] UKUT 173 (TCC)

Bad debt relief and fraudulent employee

Summary – The employee was not acting legitimately within the course of his employment but rather on a 'frolic of his own'. Bad debt relief was allowed.

The employee had arranged things so that when a customer made a payment by phone, using a credit or debit card, the monies were not paid to the company's bank account but rather syphoned to his bank account.

The company accounted for the output tax due on the telephone sales but when the directors discovered what the employee had done, they claimed bad debt relief on a later VAT return.

HMRC's argued that a supply had taken place with the employee acting for and on behalf of the company and thus the company was paid for the goods/services when the customer gave his/her credit or debit card details

The company appealed.

Decision

The issue in this appeal was whether, when the dishonest employee procured payment for the various goods/services, he was acting legitimately in the course of his employment or dishonestly on a frolic of his own?

The Tribunal concluded that the answer was self-evident because it is not possible to conclude that an employee acting as they did was acting legitimately within the course of his employment. There was no dispute that the company did not receive the funds that the dishonest employee caused to be credited to one of his personal banking facilities. It is untenable to argue, as HMRC seems to argue, that this dishonest manager received those funds as agent for the appellant company.

The company was entitled to claim bad debt relief and the appeal was allowed.

Total Catering Equipment Limited v HMRC (TC07184)

Restriction on lower rate for energy saving

Currently, the 5% reduced VAT rate applies to the installation of energy-saving materials such as insulation, solar panels and other technologies in residential properties. The restricted rate lowers the cost for homeowners to install these energy-efficient products in their homes.

For many years, the European Commission has argued that the scope of our reduced rate for such installations was too wide and in 2015 the CJEU agreed. While we remain a member of the EU, the UK is obliged to comply with this decision. Failure to do so would result in the European Commission issuing infraction fines against the UK.

Consequently, the UK is amending its legislation to limit the scope of the reduced rate on the installation of energy-saving materials. From 1 October 2019, The Value Added Tax (Reduced Rate) (Energy-Saving Materials) Order 2019 brings UK law into line with EU law.

The reduced rate will no longer apply for the installation of wind and water turbines, which are not deemed to be improvements to residential accommodation. These are energy generating rather than energy saving products.

The good news is that the amendments will maintain the reduced rate on all installations of energy-saving materials for recipients who are aged 60 or over or on certain benefits, for relevant housing associations, and where the installations are in buildings used for relevant residential purposes, such as care homes. The relief will be maintained on other cases where the cost of the materials does not exceed 60% of the total cost of the installation, even where the recipient is not a qualifying person.

<http://www.legislation.gov.uk/uksi/2019/958/made>