

Business tax round up

(Lecture B1206 – 20.20 minutes)

Government's 10-year plan

On 21 July the Treasury published 'Building a trusted, modern tax administration system', a ten-year plan to modernise the tax administration system.

At the centre of this system is real-time information with all taxpayers having a single digital account that is easily accessible and secure. HMRC will introduce increasingly integrated processes, drawing on information from business systems and validated third parties. They argue that this approach will minimise the opportunities for error and avoid the problems faced by both taxpayers and HMRC in seeking to assemble tax records long after the original business transactions.

The Making Tax Digital (MTD) programme returns to the spotlight, having previously been silenced in the face of Brexit and Covid-19.

MTD for VAT

The Treasury believes that this system is working well for those who are required to register as their taxable turnover is over £85,000. Around 30% of smaller VAT-registered businesses, who are not yet required to use Making Tax Digital, have chosen to do so voluntarily.

What next?

The government believes that now is the right time to plan the extension of Making Tax Digital, as follows:

- From April 2022 Making Tax Digital will apply to all VAT-registered business for their VAT obligations;
- From April 2023, businesses and landlords with business income over £10,000 per annum which are liable for Income Tax will need to keep digital records and use software to update HMRC quarterly through Making Tax Digital.

To ensure that the Making Tax Digital approach also evolves for those businesses that have incorporated to become companies, the government will be consulting later this year on the design of what the system should look like for Corporation Tax.

Timely and accurate tax payments

Although real time tax reporting under MTD can be introduced without changing tax payments, the government is exploring the appropriate timings and frequency for the payment of different taxes. Should the use of real-time information be used to bring tax payment dates in to line real-time reporting.

Modernising tax administration

The document highlights opportunities to modernise tax administration which could include:

- simplified registration processes, so that businesses need only register once with HMRC for all taxes, rather than navigating different rules, processes and deadlines for different taxes;
- smarter use of data on taxpayers and their activities – pre-population of tax returns, including with data from third-parties – would reduce the need for taxpayers and agents to submit additional information that HMRC either already holds or could verify itself.

The 10 year plan says that “Taxpayers should be able to view their tax position and tell HMRC anything it needs to know through a single online account.” To achieve this, it would make sense for a taxpayer’s personal and business tax account to be merged.

Incremental reform

The plan concludes by saying “Modernisation of the UK’s tax system cannot and should not happen overnight.” The government is keen to debate long term reforms and is well aware of the need to ensure that its services continue to be accessible by those who are digitally excluded.

<https://www.gov.uk/government/publications/tax-administration-strategy/building-a-trusted-modern-tax-administration-system>

Football referees

Summary – Although control may have existed, a lack of mutuality of obligation meant that the referees were self-employed and not employees.

Professional Game Match Officials Limited engages the services of “National Group” referees to officiate at matches primarily in Leagues 1 and 2 of the Football League, but also in the Championship and the FA Cup, and by way of “Fourth Official”, in the Premier League. These referees undertake refereeing duties in their spare time, typically alongside other full-time employment. This appeal related to the tax treatment of payments for match fees and expenses and whether they be taxed as if they were employees or self-employed?

Professional Game Match Officials Limited argued there was no contract at all with the National Group referees. However the First Tier Tribunal disagreed concluding that there was both an overarching annual contract as well as a series of individual contracts for each match that the referee was engaged. Under the overarching annual contract there was no obligation on Professional Game Match Officials Limited to provide work or on the referee to accept work offered. However, under each individual match contract, the referee would agree to officiate and Professional Game Match Officials Limited would agree to pay fees and expenses at the specified rates.

There was no penalty if the referee, having accepted an appointment, was unable to get to the match. Equally, Professional Game Match Officials Limited was free, to cancel a particular appointment and replace the referee with another person, without breach of contract. The First Tier Tribunal concluded that there was “insufficient mutuality of obligation” to give rise to a relationship of employment.

HMRC agreed that the First Tier Tribunal was correct to consider the right of control but argued that the Tribunal had erred in law in equating the right of control as the right to “step in” during the performance of the referee’s duties under the contract. HMRC did not agree that there was an absence of control as the referee was “undoubtedly the person in charge on match day”. Professional Game Match Officials Limited could not step in during a match. HMRC argued that the Tribunal focussed too narrowly on the period between the first and final whistle of the match.

HMRC argued that the tribunal should have taken into account the elements of control contained within the pre-season documentation, including the Match Day Procedures and the Code of Conduct, and the control exercised by Professional Game Match Officials Limited through its continuous assessment, training and coaching.

HMRC appealed to the Upper Tribunal.

Decision

The Upper Tribunal neatly summed up the minimum requirements for mutuality of obligation to exist for both ‘employee’ and ‘employer’ such that an employment relationship exists:

- The employee must have an obligation to perform at least some work personally. The employee can in some circumstances refuse to work, but cannot decide to never turn up for work;
- The employer must have an obligation to provide work or, in the alternative, a retainer or some form of consideration in the absence of work.

The Upper Tribunal agreed with the First Tier Tribunal that mutuality of obligation was not satisfied. However, they disagreed when it came to control.

The Upper Tribunal confirmed that a practical limitation on the ability to interfere in the real-time performance of a task by a specialist did not necessarily mean there was not sufficient control to create an employment relationship. They stated that for control to exist, the employer must have the right to give directions relating to the performance of the employee’s obligations during the subsistence of the contract and not just during the performance of the obligations. The First Tier Tribunal had erred in their decision. Further, the First Tier Tribunal had concluded that Professional Game Match Officials Limited was unable to impose any sanction during an individual contract for breach by a referee, as their only remedy was to terminate the contract altogether.

The Upper Tribunal disagreed and concluded that such termination would constitute “stepping in during the period of the contract”, even though it was at the contract’s end.

The Upper Tribunal concluded that, although the First Tier Tribunal had erred in their decision on control, this did not necessarily mean that Professional Game Match Officials Limited did exercise sufficient control over the referees in the context of each Individual Contract to render them employees. However, given the lack of mutuality of obligation decision already reached, and that only one of the tests needs to be satisfied, the matter was taken no further.

The appeal was dismissed.

Investment company management expenses

Summary - Management expenses linked to the sale of a subsidiary were disallowed as the decision to sell had been made by the company's parent company who had recharged the expenses to the holding company.

Centrica Overseas Holdings Limited is an investment holding company. It is a subsidiary of BG Gas Holdings Limited, which is itself a subsidiary of Centrica, the biggest supplier of energy to the UK domestic market.

The disputed expenditure of £2,529,697 related to fees paid to three professional firms in connection with the disposal of certain subsidiary companies owning gas and power businesses. Were these expenses disallowed direct costs of the disposal or part of the general management of the group's strategic investments making them allowable?

Centrica Overseas Holdings Limited had a Dutch subsidiary, Oxxio BV that in turn owned four different subsidiaries. In 2009 Centrica decided to sell Oxxio BV and its subsidiaries, incurring £3.8 million of fees between 2009 to 2011. The money was spent on financial advice, finding a buyer, vendor due diligence and advice on Dutch law relating to a complex restructuring that resulted in the sale of the assets of some of the subsidiaries via a partial de-merger. This sum was recharged to Centrica Overseas Holdings Limited, who claimed £2.5 million as deductible management expenses.

On 19 December 2016, HMRC issued a closure notice amending Centrica Overseas Holdings Limited 's company tax return on the basis that none of the disputed expenditure was allowable..

The company appealed on 11 May 2017.

Decision

The First Tier Tribunal found that the expenditure did not qualify as management expenses for activities carried out by Centrica Overseas Holdings Limited. It was Centrica Overseas Holdings Limited's parent that had made all of the decisions. There was no evidence to show that Centrica Overseas Holdings Limited's directors had taken any key decisions.

The appeal was dismissed.

Centrica Overseas Holdings Limited v HMRC (TC07683)

Share buy back

Summary – The £1.95 million received by the taxpayer as a result of the share buy back was a distribution subject to income tax.

Computer Aided Design Limited was an employment bureau for consultants. Bostan Khan had prepared the management accounts of the company since the mid-1990s and the company rented space in his offices.

The company's three shareholders no longer wished to work together and so in 2013 they approached Bostan Khan to see if he was interested in buying the company with a view to winding it up. To avoid a pre-sale dividend and the resultant tax on this distribution, the original shareholders sold the company complete with significant

reserves to Bostan Khan for £1.95 million. Their aim was to achieve a capital gain and claim entrepreneurs' relief.

On the same day Computer Aided Design Limited immediately bought back 98 of the 99 shares for consideration of £1.95m leaving Mr Khan with one share in the Company.

HMRC argued that the buy back should be treated as a distribution of £1.95 million, with Bostan Khan being liable to income tax. If correct, the original shareholders had avoided the pre-sale dividend distribution, with Bostan Khan effectively paying their tax!

The First Tier Tribunal agreed with HMRC and Bostan Khan appealed to the Upper Tribunal. He argued that the First Tier Tribunal had erred in failing to recognise the true substance of the share sale agreement and should not be taxed separately. This was a composite transaction whereby Bostan Khan received the remaining share in the Company without £1.95m of distributable reserves. His liability to tax should have been on his net receipt of the single share.

Decision

The Upper Tribunal decided that the First Tier Tribunal had erred in law because it had failed to consider the purpose of the relevant legislation.

The tribunal went on to conclude that the share sale and subsequent purchase were separate agreements, advised on separately. It was not relevant that the transactions were linked, nor that it was pretty certain that both transactions would take place.

Considering the share buy back, the Upper Tribunal stated that the purpose of s385 ITTOIA 2005 was to tax the recipient of the distribution or the person entitled to that distribution. Only the shareowner, Bostan Khan, could receive this distribution and so HMRC were correct to tax Bostan Khan on that distribution. The appeal was dismissed.

Bostan Khan [2020] UKUT 0168 (TCC)

Ultrasound scans for pregnant women

Summary – The supply of each of the various ultrasound packages was an exempt supply of medical care.

Window To The Womb (Franchise) Limited operated a franchise model for businesses that supply various packages of ultrasound scans for pregnant women. D I Harries Limited and DJC Studios Limited are franchisees. There are nine other franchisees making the same or similar supplies and their appeals are stayed pending the result of this appeal.

While the appellants believed that they were supplying medical care in the form of diagnostic scanning, HMRC argued that they were supplying a “bonding experience” or a “reassurance scan” for pregnant women based on viewing the foetus and being provided with images.

Both parties agreed that the:

- supplies were not intended to replace NHS services (12 and 20 week scans);
- radiographers who carried out the scans were persons registered under the Health Professions Order 2001.

The principal issue was whether the services provided consisted of the provision of medical care making them exempt under Group 7 Schedule 9 VATA 1994. Both parties agreed that the ultrasound scans offered were not clinically justified, in the sense that there was no clinical reason for pregnant women to have the scans. But did this prevent the supplies from being VAT exempt?

Decision

The First Tier Tribunal confirmed that they needed to decide what was the principal purpose of the supply. If a typical customer bought a scan package for the diagnosis, monitoring, treatment or prevention of illness, it was an exempt supply.

The Tribunal acknowledged that scans do provide a bonding experience but they also provide reassurance to customers that may reduce anxiety. However, simply providing reassurance was not sufficient to characterise the supply as a supply of medical care.

The Tribunal considered each of the scan packages in turn, concluding that each was indeed an exempt supply. So for example:

- “Reassurance scans” provided reassurance but also provided an obstetrics report including information about a known pregnancy, with the woman choosing to monitor her own medical condition. The fact that such scans were available through the NHS did not affect that conclusion;
- “Well-being scans” resulted in a Well-being report confirming a single or multiple pregnancy and a heartbeat; it detected certain abnormalities, provided a growth check and confirmed the position of the baby and the placenta. This was all information that diagnosed or monitored a medical condition in the woman or the foetus;
- “Well-being + gender scans” resulted a ‘well-being report’ and it was unlikely that this scan would be purchased with the sole purpose of confirming the gender of the baby when this information is likely to be provided at the 20-week scan offered by the NHS. The principal purpose was the report and so this scan is an exempt supply of medical care
- The appeal was allowed.

Window To The Womb (Franchise) Limited, D I Harries Limited, DJC Studios Limited v HMRC (TC07687)

Time limit for DIY housebuilders scheme

Summary – The taxpayers has submitted their refund claim within the relevant three months as stated in HMRC guidance notes.

John and Monica McGarry reside at 36A Ballynagarve Road, Magherafelt, the property that was the subject matter of the refund claim received by HMRC on 2 February 2018. HMRC refused the application stating that most of the invoices were dated between 2013 and 2014 and their records confirmed that the couple had been occupying the property from April 2014.

On the refund application form the couple stated that they occupied the property from 1 February 2017 and prior to that they had purchased a mobile home and placed it on the site to live in. There was a delay in obtaining the completion certificate as Building Control required particular works to be carried out before they would provide it. This was finally issued and was dated 3 November 2017.

So this issue in this case was when does the time limit for making a claim for repayment of VAT under the DIY housebuilders scheme need to be made by?

- John and Monica McGarry relied on the guidance notes on HMRC's claim form, which stated that the time limit was 3 months after the issue of completion certificate by a local government official. In this case they used the Building Regulation Completion Certificate;
- HMRC argued that that was only one of the tests and that where the building had been occupied at an earlier date that was the date from which the 3 months period commenced.

Decision

The Tribunal agreed with the McGarrys stating that they had relied on the local council's Completion Certificate and the fact that paragraph 14 states that the three months will usually run from the date of the document you are using as your completion evidence.

The appeal was allowed and McGarrys were instructed to resubmit the original invoices to enable HMRC to consider the correctness of the other elements of the claim.

John McGarry and Monica McGarry v HMRC (TC07659)