

Personal tax round up

(Lecture P1206 – 27.36 minutes)

Home to client mileage claims

Summary – Mileage claims for travelling from home to clients was allowable but restricted to 25p per mile for business miles travelled in excess of 10,000 miles.

Amara Akhtar was employed as a mobile care worker during 2013/14 to 2016/17, working long hours from early morning until late evening, seven days a week and for 48 weeks a year.

She drove from her home to care for unwell and elderly clients in their homes. Each day she would visit 14 or so clients travelling from one to the next in her car, often doing client's shopping, going to the post office for them, taking them to doctors' appointments and collecting prescriptions. She returned home most nights, but, when requested, stayed overnight at clients' houses.

Mrs Akhtar had immigrated to the UK from Pakistan many years ago, could only speak basic English but struggled with both reading and writing. She knew little about tax and had relied on an elderly client to prepare her tax returns for the tax years in question. She kept no mileage records of her car journeys for work. She did not check the tax returns prepared by her friend on her behalf before signing them.

Mrs Akhtar received no mileage allowance payments from her employer and so was entitled to claim mileage allowance relief for business miles undertaken at the approved rate of 45p for the first 10,000 business miles and 25p thereafter. Mrs Akhtar had claimed this relief all at a rate of 45p per mile.

HMRC challenged her mileage claims. It was common ground between both parties that Mrs Akhtar's travel between clients was "business travel" and so relief was available. The issue was over the first journey of each day when she travelled from home to her first client and also her last journey each day when she travelled from her last client back home. HMRC argued that this was ordinary commuting and so disallowed. In addition, HMRC challenged the mileage rate used where business miles exceeded 10,000 a year.

In addition, HMRC challenged the amount of tax deducted under PAYE that appeared in her tax returns for 2013/14 to 2016/17. HMRC claimed these should be as reported on her P60s, rather than the lower figures that she had reported.

Decision

The First Tier Tribunal concluded that the first and last journeys each day fell within the definition of a "temporary workplace". The tasks were of limited duration, with regular turnover in her clientele. Her work at a particular client's home did not exceed 24 months. The Tribunal stated that as Mrs Akhtar's employment contract expected her to perform duties at a location within reasonable travelling distance of her home, that area was to be treated as her "permanent workplace" and travel between home and her first and last clients of the day, was travel within the "deemed" permanent workplace and not travel between home and that permanent workplace.

Having agreed the correct mileage to use, the First Tier Tribunal confirmed that it was only the first 10,000 business miles that could be claimed at 45p per mile and that the balance needed to be restricted to 25p per mile.

Further, the First Tier Tribunal agreed that the correct figures for the amount of tax deducted under PAYE were those found in Mrs Akhtar's forms P60 for the relevant tax years.

With errors in her tax returns relating to both mileage allowance relief claims and the amount of tax deducted under PAYE, the Tribunal went on to consider HMRC's penalties. They concluded that the errors were not deliberate, but that she failed to take reasonable care in the preparation of her tax returns, judging her by the standard of a prudent and reasonable taxpayer in her position. Disclosure was prompted rather than unprompted. The percentage used to calculate the penalties were reduced and the Tribunal went further by ordering HMRC to suspend the penalties completely.

Amara Akhtar v HMRC (TC07646)

NIC on private fuel

Summary – With no mileage records or evidence of private fuel being reimbursed, NICs were due on fuel provide for private use to all but one employee.

Contract Services (Millenium) Ltd is part of the Ruttle Group that carries on business in plant hire, the provision of skilled workers to operate the plant, and ancillary activities. Contract Services (Millenium) Ltd supplies workers to the rest of the Ruttle Group.

The company employed travelling salesmen to identify potential hirers from trade magazines, word of mouth and visiting building sites. These salesmen, and selected other employees, were provided with company cars and fuel and were entitled to use these cars for private purposes as well as for work. In addition, employees were given access to the company's fuel pump to fill up their tanks once per week. Company policy required that any fuel taken for private use must either be replaced or paid for in full.

This case concerned whether or not the company was liable to Class 1A NICs on the provision of the fuel benefit to these employees.

The company believed that their employees knew not to use Contract Services' fuel without accounting for it by way of replacement or payment. This was clear company policy and that any employees caught using company fuel for private purposes without reimbursement would be regarded as theft and would be subject to disciplinary action that might include dismissal.

Decision

The First Tier Tribunal stated that there was an obligation on the company to keep, maintain and retain supporting documentation. Without record keeping it was harder for the employer to establish that, on the balance of probabilities, the employee either did not use fuel for private use or made good the expense of such fuel.

One employee did keep records and so the appeal in respect of this employee was allowed. The Tribunal found that on the balance of probabilities, this employee did not use his car for private purposes during the relevant period.

However, the appeal was dismissed in respect of the other employees. With no records kept, the company could not simply rely on the fact that company policy was that employees should not use fuel for private purposes unless they reimbursed the full cost. There was no evidence that private fuel was fully paid for.

Contract Services (Millenium) Ltd v HMRC (TC07662)

Acquiring UK domicile of choice

Summary – The First Tier Tribunal did have jurisdiction to determine a person's domicile and concluded that the taxpayer had acquired a domicile of choice in the UK.

Evert Henkes was born in Venezuela, raised in South America and educated in the USA. He is a Dutch citizen.

In February 1967, he moved to London but has never held (or applied for) UK citizenship. He is married to a British wife and has three children and seven grandchildren, all of who live near him in the UK and he sees them on a regular basis. He appeared to have no plans to leave the UK.

On marrying in 1968, he acquired his first UK property and has since owned, consecutively, three properties in the UK. Although his work took him to Singapore and the Netherlands for about six years in total, he and his wife retained their then UK property.

Following retirement the couple acquired (through a company) a substantial property in Spain. He and his extended family regularly stay there for about 50 days each tax year and keep two cars, some clothes and other personal effects at the property. The rest of the time he lived in his London home.

Evert Henkes considered himself to be domiciled outside the UK. Accordingly, he filed his tax returns on the basis that he was entitled to be taxed, and elected to be taxed, on the remittance basis.

HMRC enquired into Evert Henkes tax returns 2014/15 and 2015/16 and concluded that he had acquired a UK domicile of choice. As a result, HMRC issued information notices regarding his worldwide income and gains.

Evert Henkes applied for closure notices arguing that he was not UK domiciled and appealed against the information notices.

Decision

The First Tier Tribunal found that it had the power to determine Evert Henkes domicile and that it was appropriate to do so, as the information requested was reasonably required, and the question of domicile was key to the enquiry.

It was unclear whether his domicile of origin was in Venezuela or the Netherlands, as no meaningful links had been retained with either country.

The Tribunal noted that Evert Henkes had been UK resident for more than 40 years, with no clear plans for retiring or leaving the UK. Indeed his wife was reluctant to emigrate. With his extended family and main residence clearly in the UK, the Tribunal concluded that he had acquired a domicile of choice in the UK.

The appeal against the information notice was dismissed and HMRC was found to have reasonable grounds for not issuing closure notices.

Mr Evert Henkes v HMRC (TC07645)

Rectification of a contract

Summary – The High Court rejected a claim to rectify a contract for services that was mistakenly entered into with an individual rather than his company. Rectification was not available if the benefit was not originally contemplated.

MV Promotions Ltd is Michael Vaughan's personal service company. In 2008, MV Promotions Ltd and Telegraph Media Group Ltd entered into a contract under which MV Promotions Ltd provided the services of Michael Vaughan to Telegraph Media Group Ltd as a cricket correspondent.

Three years later, both parties agreed to extend the arrangement and a new contract was signed. Unfortunately, the new contract was signed between Telegraph Media Group Ltd and Mr Vaughan, rather than his personal service company.

Concerned about the tax effect of their error, in 2018, both parties entered into a rectification deed clarifying their original intention that the 2011 extension contract was actually between MV Promotions Ltd and Telegraph Media Group Ltd. HMRC argued that the rectification deed did not apply retrospectively and so was entitled to claim tax from Michael Vaughan personally.

The parties sought a declaration that either on its true interpretation the 2011 contract had since its inception been between MV Promotions Ltd and Telegraph Media Group Ltd or, alternatively, rectified as such.

Decision

The High Court held that the contracting parties were Telegraph Media Group Ltd and Michael Vaughan. Any reasonable reader of the contract would not conclude that a mistake had been made.

Although the necessary preconditions for rectification on the basis of common mistake existed, the case decision was at the court's discretion. The High Court concluded that there could be no rectification if all issues between the parties had been resolved and rectification was sought only to achieve a tax saving. The court concluded that this was the case here. HMRC was entitled to claim the higher personal tax due under the contract.

MV Promotions Ltd and another v Telegraph Media Group Ltd and HMRC [2020] EWHC 1357 (Ch)

Multiple dwellings relief

Summary – A house and annex were not suitable to be used as separate dwellings and so multiple dwellings relief was denied.

Keith Fiander and Samantha Brower bought an unoccupied detached property for £575,000 on 27 April 2016. Attached to the main house was a self-contained annex, connected by a corridor with no door, although a door could have been fitted. The properties shared a post box, the utility supplies or there was only one council tax bill. The “Rightmove” website described the property as having three bedrooms with “bedroom 1” being in the annex and two loft rooms. It did not mention the annex. Further there was a restrictive covenant over the land to prevent more than one bungalow being built on it.

The taxpayers argued that the annex was separate from the house and claimed multiple dwelling relief. Under para 7 Sch 6B FA 2003 applies if two properties are each suitable for use as separate dwellings and if so, the SDLT rates can be averaged over the number of properties. The issue here was whether a house and annex were separate dwellings.

HMRC argued that the fact that a door could be installed to separate the annex from the main house was irrelevant. On purchase, this was a single dwelling.

Decision

The First tier Tribunal stated that the test we were dealing with was a test of “suitability” for use, rather than adaptation for use; and it is a test of use as a “single dwelling,” rather than of use as separate living accommodation.

The First Tier Tribunal stated that to be suitable for use as a single dwelling, a property must accommodate all of a person's basic domestic living needs and that was the case here.

However, there must also be a degree of privacy and security. The Tribunal could imagine the annex being occupied by an older relative as a “granny flat”, or by one of the owners grown-up children, with this arrangement providing adequate privacy and security to occupants of both parts of the property, given family bonds of trust. However, without such close family ties, the First Tier Tribunal concluded that, with only an open corridor connecting the two, there was insufficient privacy and security for the occupants.

Finally, the decision should be made at the time of completion and on that date, there was nothing that indicated that there had ever been a physical barrier between the annex and the main house. The possibility of erecting a door to separate the properties after purchase was not relevant.

Interestingly, the Tribunal did not put a great deal of weight on the evidence that the annex had no separate utility meters or council tax status. Nor did they consider a single postal address to be a significant factor in this case. Finally, the Tribunal placed no weight on the “restrictive covenant” in the land registry, which they said was unclear in itself and in its implications for the issues in this case.

Keith Fiander and Samantha Brower v HMRC (TC07676)

Whether tax adviser negligent

Summary - The Court of Session held that tax advisers had not been negligent in failing to advise a client to transfer shares to his wife before a sale in order to benefit from entrepreneurs' relief.

Hugh McMahon was the sole shareholder in a car dealership, Lomond Motors Ltd, a company with two wholly owned subsidiaries. His wife was an employee of the company and also the company secretary for all three group companies. On 4 July 2012, he sold all the shares in his company to Lookers Motor Group Limited, incurring a substantial liability to CGT on the disposal.

For a number of years, Grant Thornton UK LLP had provided tax and accountancy services to the group and was also engaged to provide personal tax services for the couple. The case considered whether Grant Thornton UK LLP ought to have advised the owner to transfer some of the shares to his wife so as to benefit from her entrepreneurs' relief £10m lifetime limit.

Hugh McMahon argued that his letter of engagement with Grant Thornton included an express term that Grant Thornton UK LLP would advise him on tax planning ideas that might be of assistance to him.

Decision

The Court of Session held that the engagement letter covered tax compliance services and clearly distinguished between those services and ad hoc planning and advice, which would require a separate agreement. The adviser was not obliged to provide tax planning services.

Despite this, in the lead-up to the sale, Grant Thornton UK LLP had provided and discussed a schedule outlining the option to transfer shares to his wife to utilise her Entrepreneurs' Relief allowance.

The skill and care exercised by Grant Thornton UK LLP in the lead-up to the sale had not fallen below the requisite standard of care.

The appeal was dismissed.

Hugh McMahon v Grant Thornton UK LLP [2020] CSOH 50

Adapted from case summary in Tax Journal (12 June 2020)

Job Retention Scheme replacement

As expected the Coronavirus Job Retention Scheme has not been extended beyond the end of October 2020.

However, the government has introduced a one-off payment of £1,000 to UK employers for each furloughed employee who remains continuously employed through to the end of January 2021. This will be paid from February 2021.

To be eligible, employees must earn above the Lower Earnings Limit (£520 per month) on average between the end of the Coronavirus Job Retention Scheme and the end of January 2021.

Further detail about the scheme will be published in September 2020.

Temporary Stamp Duty Land Tax change

The Chancellor announced a temporary change to Stamp Duty Land Tax on residential property bought between 8 July 2020 to 31 March 2021, with SDLT by extending the zero rate band to £500,000. So for this period the rates will be as follows:

<u>Property or lease premium or transfer value</u>	<u>SDLT rate</u>
Up to £500,000	Zero
The next £425,000 (the portion from £500,001 to £925,000)	5%
The next £575,000 (the portion from £925,001 to £1.5 million)	10%
The remaining amount (the portion above £1.5 million)	12%

The 3% higher rate for purchases of additional dwellings applies on top of revised standard rates above for the period 8 July 2020 to 31 March 2021, so that each of the bands above will have 3% added to that rate.

The nil rate band which applies to the 'net present value' of any rents payable for residential property is also increased to £500,000 from 8 July 2020 until 31 March 2021 with 1% being charged where the net present value exceeds £500,000.

Companies as well as individuals buying residential property worth less than £500,000 will benefit from these changes, as will companies that buy residential property of any value where they meet the relief conditions from the corporate 15% SDLT charge.

On the 1 April 2021 the reduced rates shown in the above tables will revert to the rates of SDLT that were in place prior to 8 July 2020.

<https://www.gov.uk/guidance/stamp-duty-land-tax-temporary-reduced-rates>

Temporary change to LBTT threshold in Scotland

On 10th July, Finance Secretary Kate Forbes announced a temporary increase in the nil rate band residential property transactions from £145,000 to £250,000.

The revised rates and bands will only apply to transactions with an effective date on or after 15 July 2020 and will remain in place until 31 March 2021

Rates for the Additional Dwelling Supplement (ADS) and non-residential LBTT remain unchanged.

<u>Purchase price</u>	<u>LBTT rate</u>
Up to £250,000	0%

Above £250,000 to £325,000	5%
Above £325,000 to £750,000	10%
Over £750,000	12%

<https://www.revenue.scot/news/news/lbtt-temporary-increase-nil-rate-band-0>

Welsh Land Transaction Tax

The Welsh Government has now also announced a reduction to land transaction tax (LTT), with effect from 27 July 2020.

The starting threshold for LTT main residential rates will be temporarily increased from £180,000 to £250,000 and will run from 27 July 2020 to 31 March 2021.

Eat Out to Help Out Scheme

The Chancellor has introduced this new scheme in attempt to support the hospitality industry. Restaurants that register for the scheme can offer half price meals, up to a maximum of £10 per person, to diners for food and non-alcoholic drinks to eat or drink in every Monday to Wednesday throughout August. The scheme starts on Monday August 3 and runs until Monday August 31. Alcohol and service charges are excluded from the offer.

Businesses will still need to pay VAT based on the full amount of their customers' bills and any money received through the scheme will be treated as taxable income.

Who can register?

A business can register if it:

- sells food for immediate consumption on the premises;
- provides its own dining area or shares a dining area with another establishment for eat-in meals; and
- was registered as a food business with the relevant local authority on or before 7 July.

The scheme does not apply to takeaway food or drink, catering services for private functions, a hotel providing room service only. HMRC guidance states that if a customer purchases a meal with the intention of eating it but then takes it away and leaves the premises, the business can still apply the discount.

How to register

To register, a company will need the:

- Government Gateway ID and password;
- name and address of each establishment to be registered;

- UK bank account details;
- VAT registration number (if applicable);
- employer PAYE scheme reference number (if applicable);
- Corporation Tax or Self Assessment unique taxpayer reference

If a business is registering more than 25 establishments a link to a website must be supplied, containing details of each establishment participating in the scheme including the trading name and address.

Once registered, the business will receive a registration reference number that will be used to claim the reimbursement.

Record keeping

For each day of the scheme and for each registered establishment, the business must keep a record of: the total

- number of people who have used the scheme in your establishment;
- value of transactions under the scheme;
- amount of discounts you've given.

Making a claim

The service to be used for making the claim will be available from 7 August 2020 to 30 September 2020 and HMRC will pay eligible claims within 5 working days.

Business must wait 7 days from registration to make their first claim and are able to submit claims on a weekly basis.

HMRC will provide more guidance on how to make a claim when the registration service is open.

<https://www.gov.uk/guidance/register-your-establishment-for-the-eat-out-to-help-out-scheme>

OTS Capital Gains Tax review

In a letter dated 13 July 2020, the Chancellor asked the Office of Tax Simplification (OTS) to carry out a review of Capital Gains Tax in relation to individuals and smaller businesses. In his letter he states:

“This review should identify opportunities relating to administrative and technical issues as well as areas where the present rules can distort behaviour or do not meet their policy intent. In particular, I would be interested in any proposals from the OTS on the regime of allowances, exemptions, reliefs and the treatment of losses within CGT, and the interactions of how gains are taxed compared to other types of income.”

It seems that CGT could be one of the ways that the government is going to claw back the billions of pounds spent in supporting the economy through the Coronavirus pandemic.

What this could mean?

It seems that the government could target a number of areas within the current CGT regime and a number of commentators have suggested the following could be affected:

- Aligning CGT rates with income tax rates of 20%, 40% and 45% seems a real possibility as not only will this raise money, it will simplify the existing tax system;
- Revisiting entrepreneurs' relief where currently qualifying gains of up to £1 million (recently reduced from £10 million) are taxed at only 10%. This could be abolished completely;
- The reduction or even abolition of the annual exempt amount of £12,300 is an option. Why keep this when arguably it is the better off who have assets to sell and benefit from the exemption?
- With wealth tied up in our homes, Principal Private Residence relief could be targeted. With many relying on the value tied up their home to fund future care bills, abolition of the relief might be taking things too far, but we could see some kind of restriction on the amount of relief that can be claimed.

OTS review

On 14th July 2020, the OTS published an online survey and a call for evidence to seek views about capital gains tax.

The call for evidence consists of two sections:

Section 1: This seeks high-level comments on the principles of CGT by 10 August 2020 in order to help shape the balance of the work and could put the OTS in a position to provide an interim update on bigger picture issues;

Section 2: This section invites more detailed comments on the technical detail and practical operation of CGT by 12 October 2020.

The OTS has stated that their review will consider general areas such as:

- the overall scope of the tax and the various rates which can apply;
- reliefs, exemptions and allowances which can apply, and the treatment of losses;
- the annual exempt amount and its interactions with other reliefs;
- the position of individuals, partnerships and estates in administration;
- the position of unincorporated businesses and owner-managed companies, including their setting up, selling or winding up of such entities;
- any distortions to taxpayers' personal or business investment decisions;

- interactions with other taxes including Income Tax, Capital Allowances, Stamp Taxes and IHT.

The review will also more specific areas such as administrative or technical issues relating to:

- clearance and claims procedures
- chargeable gains on shares and securities, including holdings of listed shares;
- the acquisition and disposal of property;
- the practical operation of principal private residence relief;
- consideration of the issues arising from the boundary between income tax and capital gains tax in relation to employees;
- valuations, record-keeping, calculating any tax payable and making returns, including claiming losses;
- the information HMRC have and can use to help them reduce administrative burdens, improve customer experience and ensure compliance.

Focussing in individuals and smaller businesses, this review will not extend to issues specific to corporate groups, such as substantial shareholding exemption, company reorganisations or demergers.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/900225/CGT_Scoping_document_July_2020.pdf

<https://www.gov.uk/government/consultations/ots-capital-gains-tax-review-call-for-evidence-and-survey>