

Personal tax round up (P1266 – 19.32 minutes)

Increasing the normal minimum pension age

Following a consultation on how to implement the changes announced in 2014, the government is introducing an increase to the normal minimum pension age (NMPA) from 55 to 57 by amending FA 2004. The aim of this change is to keep in line with increasing life expectancy and changes to working practices. This follows a change in the NMPA from 50 to 55 in 2010.

The changes include:

- increasing the NMPA from 55 to 57;
- introducing a protection scheme for pension schemes of certain uniformed services where an unfettered right to an earlier retirement age is in place.

The changes will have effect from 6 April 2028.

These changes will have no effect on those able to access pensions early due to ill health; that legislation will not be amended.

The government has published a summary of responses to the consultation, alongside a policy paper, draft legislation and explanatory notes.

Redundancy related inaccuracies ([Lecture P1266 – 19.32 minutes](#))

Summary – Omitting a large sum from the taxpayer's tax return was not deliberate but HMRC did not seek an alternative penalty for careless behaviour.

Angel Rodriguez-Issa was made redundant by Morgan Stanley in July 2016 and subsequently commenced employment with BNP Paribas.

He entered into a Settlement Agreement dated 12 September 2016 under which, Morgan Stanley would pay all outstanding salary, a payment equivalent to three months of salary in lieu of notice and a severance payment. Further, Morgan Stanley would waive its right to repayment of an outstanding loan.

He filed his 2016/17 tax return in December 2017 but omitted just over £176,700 of income received from Morgan Stanley after he had left employment with the firm as well as any reference to his employer having written off the loan.

In October 2018, HMRC opened an enquiry into his 2016/17 tax return and later, both parties agreed that there were inaccuracies in that return such that his tax liability had been understated by £68,000.

HMRC argued that the omissions were deliberate. The sums were large and the settlement agreement specifically stated that he was to be liable for the income tax payable on the settlement sums paid. HMRC contended that Angel Rodriguez-Issa must have been aware that the substantial sum was missing from his return.

Angel Rodriguez-Issa argued that Morgan Stanley had not given him paperwork for these additional amounts, so at the worst his behaviour was careless. He argued that, as in previous years, he had

reported income based on returns provided by his employers. He had completed his return using the P45 received from Morgan Stanley and the P60 provided by his new employer, BNP Paribas. He did not appreciate that Morgan Stanley had made further payments that were not included on these documents. He claimed that he was not aware the loan write off would trigger a lump-sum tax liability.

Decision

The First Tier Tribunal were not satisfied that HMRC had discharged the burden of proving that the inaccuracies were the result of deliberate behaviour on the part of the taxpayer.

The First Tier Tribunal accepted that Angel Rodriguez-Issa believed that he had completed his tax return correctly using figures from his P60 and P45 and that he did not understand the tax treatment of the loan waiver. Completing his return without professional advice meant that errors had arisen but these errors were not deliberate.

Surprisingly, HMRC advanced their case on an “all or nothing” basis so that when the Tribunal found that Angel Rodriguez-Issa’s actions were not deliberate, no penalties could be charged on the basis of carelessness. The appeal was allowed and the £24,000 penalty was cancelled.

Angel Rodriguez-Issa v HMRC (TC08123)

Unpaid police overtime and allowances

Summary – The global settlement sum that included compensation, legal expenses and insurance, was only taxable to the extent that it was not used to pay for the legal and insurance costs incurred in bringing the claim.

Keith Murphy was one of a number of police officers with the Metropolitan Police Service who had received payments under a settlement agreement for alleged unpaid overtime and other allowances.

The total payment, or Principal settlement sum included compensation, agreed costs as well as protective insurance to cover the Metropolitan Police Service’s legal costs, in the event that the claim was unsuccessful.

Keith Murphy excluded the settlement amount from his tax return considering the total amount to be non-taxable. HMRC raised discovery assessments on the basis that the total settlement sum was employment income.

Agreeing with HMRC, the First Tier Tribunal found that Keith Murphy was subject to Income Tax on the full amount received under the settlement agreement on the basis that the amounts were emoluments from his employment.

Keith Murphy appealed to the Upper Tribunal.

Decision

The Upper Tribunal stated that it was common ground that the amounts paid under the Settlement Agreement could only be regarded as “earnings” within s62(2) ITEPA 2003 by virtue of s62(2)(b) as any “other profit... obtained by the employee”.

Referring to *Eagles v Levy* 19 TC 23, the Upper Tribunal decided that even if the payments were other profits derived from employment, amounts could be deducted in arriving at the taxable amounts, where necessarily incurred to obtain their compensation.

In this case, the sum received was more than the just compensation for the unpaid overtime and hardship allowances. Keith Murphy did not make a profit within s.62(2)(b) ITEPA 2003 to the extent that the Principal Settlement Sum was paid to cover the legal success fees and insurance premiums. The additional sums should be deducted.

The Tribunal agreed with Keith Murphy that the taxable employment income should be calculated as his share of the principal settlement sum less his share of each of the legal costs and the insurance premium.

The appeal was allowed.

Keith Murphy v HMRC [2021] UKUT 0152 (TCC)

Payments changing pension arrangements

Summary –Facilitation payments to pension fund members to compensate the expected lower pension payments and reduction in future employer contributions were taxable as earnings, as the payments arose following a change to future employment conditions.

E.ON UK plc wanted to reduce the costs as well as risks associated with its pension schemes. The company operated a number of different pension schemes. Since 2008, new employees have been eligible to join a defined contribution scheme but before that date, employees had been invited to join a retirement balance arrangement, and before that a traditional final salary scheme.

This case concerned payments made to the 1,100 members of the retirement balance scheme. Following negotiations which unions and employees, the company made an offer to its members consisting of a two year pay deal as well as a one-off cash Facilitation Payment, calculated as 7.5% of salary, subject to a minimum payment of £1,000. The offer also included a number of employment commitments by E.ON UK plc for the next four years.

E.ON UK plc sought HMRC clearance that the Facilitation Payments were exempt from income tax and National Insurance Contributions as they were not “from” the employment within the meaning of the Income Tax (Earnings and Pensions) Act 2003 (“ITEPA”), s 9(2) and the Social Security Contributions and Benefits Act 1992 (“SSCBA”), s 3(1).

HMRC disagreed and after some discussion, the company paid tax and NICs on all the Facilitation Payments, with the exception of one “test” employee, a Mr Jason Brotherhood. HMRC issued E.ON with a determination of £758 in respect of income tax and a further £987.07 to cover NIC.

It was common ground that the facts of Mr Brotherhood’s case and those of other retirement balance members were substantially the same, except in relation to quantum. HMRC accepted in correspondence with E.ON that if it was successful in its appeal before the Tribunal, the tax and NICs on the Facilitation Payments of other retirement balance members would be refunded.

E.ON argued that:

- the Facilitation Payment was compensation for the loss of pension rights and so not from employment;

- the Facilitation Payment replaced a non-taxable sum, being:
 - the more generous pension payments that Mr Brotherhood would otherwise have received from the retirement balance scheme;
 - the higher pension contributions which would have been made by E.ON to Mr Brotherhood's pension pot; or
 - the earnings Mr Brotherhood would need, to make the extra pension contributions necessary to obtain the same level of benefits; and/or
- the Facilitation Payment was not “from” the employment, because it was “from” something else, namely a reduction in the employees' pension rights.

Decision

The First Tier Tribunal agreed with HMRC.

The Facilitation Payments were part of an integrated package that involved several elements, not all of which were pension-related.

The payment was not compensation for loss of pension rights as the employee rights up to the change in conditions were unaffected. The Tribunal acknowledged changes were made to the pension arrangements going forward but that those changes were part of a comprehensive package that included a two year pay deal for all employees, a commitment by E.ON not to make further amendments to the pension arrangements for five years, and a set of “employment commitments”, which remained in place for two years.

The Facilitation Payment could not be separated out from the rest of the package and there was “no specific focus on the Facilitation Payment”. The Tribunal concluded that the changes were a complete integrated package, with the payments representing “an inducement to...provide future services” but on different terms. The payment arose “from employment”.

The appeal was dismissed.

E.ON UK plc v HMRC (TC08125)

NIC on car allowance

Summary – Car allowances paid in lieu of a company car were earnings liable to NICs, as the rate was set by job grade rather than business use. The allowances were not exempt 'relevant motoring expenditure'.

Laing O'Rourke Services Ltd is a multinational construction and engineering company. The company operated a car scheme that was inherited when it acquired Laing Construction back in 2001. It is this scheme that is the subject of this appeal.

Under the scheme, rather than having a company car, eligible employees could choose to receive a cash allowance, paid monthly in arrears.

To be eligible for the cash alternative, employees were required to have their own vehicle available for business use. The amount paid varied from £4,000 to £10,000 per annum and was dependant on job grade. The number of business miles each employee completed could vary hugely from year to

year and within different categories of staff and between roles. Evidence supplied showed that at least a third of scheme participants did not use a car for any business miles at all and there was no periodic review of the payments made to an employee to take into account any variation in business mileage.

The car allowance was subject to income tax as well as primary and secondary NICs. However, following the Court of Appeal's decision in *Cheshire Employer and Sills Development Ltd v HMRC* [2010] UKFTT 379 (TC), Laing O'Rourke Services Ltd later claimed a repayment of secondary NICs covering the period 2004/2005 to 2017/2018, totalling more than £2.2 million. The company claimed that an amount of the payments fell within what regulation 22A of, and paragraph 7A of Part VIII of Schedule 3 to, the Social Security (Contributions) Regulations 2001 refer to as the "Qualifying Amount" and, as a result, should not have been subject to NICs.

HMRC disagreed stating that "Qualifying Amount" was limited to payments of "relevant motoring expenditure" defined in regulation 22A and the payments made under the car allowance were not "relevant motoring expenditure".

The company argued that if the "Qualifying Amount" disregard for NICs is limited to payments of "relevant motoring expenditure" that disregard still applies as the payments were "relevant motoring expenditure". Alternatively, the company stated that the payments were not "earnings" for the purposes of NICs.

Decision

The Tribunal found that the allowance payments were earnings, and not a reimbursement of business expenses. The scheme payments were determined by reference to job grade and were not linked to business mileage or use. There was an element of bounty as the rates were not set by reference to business need; indeed a significant proportion of staff receiving the allowance, undertook no business travel.

The Tribunal found that the scheme payments were not "relevant motoring expenditure", as the allowance payments were made based on the individual's staff grade and seniority, rather than use of the car.

The appeal was dismissed.

Laing O'Rourke Services Ltd v HMRC (TC08161)

HICBC discovery assessment invalid

Summary – A taxpayer who had not submitted a tax return (as he was taxable under PAYE or been issued with a notice to file), was not liable to the High-Income Child Benefit Charge under the discovery provision as the charge was not income to be 'discovered' under s.29 TMA 1970. HMRC should have used other powers to collect the tax due.

HMRC assessed the taxpayer to the high income child benefit charge (HICBC) under the discovery provisions (TMA 1970, s.29(1)(a)) for the years 2014/15 to 2016/17. In that period, his wife had claimed child benefit and his income exceeded £50,000 in each year, but he had not submitted a Self Assessment tax return nor been issued with a notice to file. He was not charged a failure to notify penalty because HMRC considered he had a reasonable excuse.

The taxpayer appealed against the assessments. The First Tier Tribunal decided that, although he was liable to the charge and HMRC had made a discovery, the assessments were not validly raised.

The officer had not discovered any 'income which ought to have been assessed to income tax' within s.29(1)(a).

HMRC appealed.

Decision

In summary, the Upper Tribunal agreed with the First tier Tribunal that the discovery assessments raised were invalid. In this case, HMRC was not seeking to tax untaxed income; it was trying to collect an unpaid tax charge.

HMRC argued that on a purposive construction, the word 'income' in s.29(1)(a) could simply be read as including any amount liable to income tax. The Upper Tribunal said HMRC had interpreted the provision too widely. Its purpose is to assess income that ought to have been assessed.

The tribunal noted that HMRC had contacted the taxpayer within the four-year window for issuing a notice to file, so it could have issued a notice to file and, if he failed to submit a return, it could have raised a determination to income tax under s.28C.

Another option would have been to issue a simple assessment under s.28H to which the 20-year time limit provided by s.36(1A)(b) applied.

The tribunal concluded it could not infer from s.29(1)(a) a 'broad intention to cover any shortfall of tax' nor was it 'inextricably linked to the self-assessment regime'.

Further, it could not be fairly said that the officer discovered that there was income that had not been assessed. Rather, he discovered that the taxpayer should have paid the HICBC.

Finally, on HMRC's argument that there was a drafting error, the judges disagreed. They said if s.29 did require amendment this would be more than correcting an error, it would be judicial legislation.

Given that s.29 was not part of Self Assessment and it had not been established that an additional assessing procedure for the HICBC was intended, the Upper Tribunal was not satisfied that such an amendment was required.

HMRC's appeal was dismissed.

HMRC v Jason Wilkes UT/2020/000354

Adapted from the case summary in Taxation (8 July 2021)

Grant of lease a separate transaction

Summary – The grant of a commercial lease over a residential property's garage on the same day as the residential property was bought had no effect on the property as a whole being treated as residential property for SDLT purposes.

On 27 July 2018, Brandbros Ltd bought a property with a garage and filed a SDLT return on the basis that the property was residential but a month later the company sought to amend the return. On the day of completion, Brandbros had granted a lease to SFEP Limited to use the garage at the rear of the property as a storage unit. The company claimed that as the commercial lease was granted on the effective date of the property transaction, this was sufficient for it to be classed as mixed-use and that a repayment of just under £10,000 was due.

Following an enquiry, HMRC concluded that the property consisted of residential elements only and on 10 July 2019 issued a closure notice stating that SDLT was due at the residential rate and consequently a refund was not due.

Brandbros Ltd appealed.

Decision

The First Tier Tribunal was satisfied that the garage should be treated as a building or structure in the grounds or garden of the property. Therefore, as a matter of statutory interpretation, the garage was treated as residential property under s.116 FA 2003 regardless of the use to which it was put.

The Tribunal found that the grant of the lease did not alter the classification of the property bought. SDLT is a tax on transactions with the date of transaction being the date of completion. The transaction was the purchase of the property as provided in the contract for purchase and completed by the legal transfer on 27 July 2018. The subject matter of that transaction was of a property which was wholly residential. No lease had been granted over the garage at that time. It was only later, after the completion of the transaction to buy the property that another transaction took place, in the form of the grant of the lease over the garage. The fact that the grant of the lease took place on the same day had no effect on the SDLT treatment of the purchase of the Property.

The appeal was dismissed.

Brandbros Limited v HMRC (TC08126)