

## Personal tax update (Lecture P1326 – 20.51 minutes)

### Sky football commentator

*Summary – With both the mutuality of obligation and control tests satisfied, Alan Parry's hypothetical contracts with BSkyB were effectively contracts of employment.*

Alan Parry is a football commentator who has provided his services to Sky through his personal services company, Alan Parry Productions Limited. This case covers the tax years 2013/14 to 2018/19 when HMRC argue that he was caught by the IR35 legislation, raising PAYE and NIC determinations totalling just over £350,000

Over these years, there were four similar contracts under which Alan Parry Productions Limited provided Alan Parry's services as a commentator, presenter or interviewer. Each contract was for a fixed period and fees, plus expenses, for a fixed number of matches each year, including bank holidays and weekends. On each occasion, Sky determined whether he worked at the football ground or in the studio.

Prior approval was needed from Sky before Alan Parry could provide his services to other media businesses.

With Sky's approval, the contracts permitted a substitute to be provided. However, on the sole occasion when Alan Parry missed a match, Sky supplied his replacement from their own team. Sky controlled the programme and its timing.

Alan Parry Productions Limited appealed to the First Tier Tribunal.

#### *Decision*

The First Tier Tribunal concluded mutuality of obligation existed as Alan Parry was obliged to provide his services to Sky who in turn was obliged to pay him the fixed amounts specified in the contracts.

Unsurprisingly, the substitution clause was of little relevance as evidence demonstrated Sky clearly wanted Alan Parry's personal services and not someone else that he selected to present on his behalf.

The Tribunal also concluded that the level of control exercised by Sky demonstrated an employer/employee relationship as Sky had control over when, where, what and how Alan Parry worked.

The Tribunal concluded that, standing back, overall the relationship between Sky and Alan Parry was one of employment. He was not carrying on business on his own account.

The appeal was dismissed.

*Alan Parry Productions Limited v HMRC (TC08519)*

## **Umbrella company and construction workers**

*Summary – There was no mutuality of obligation under an overarching contract between construction workers and the umbrella company employing them. Each job was a separate employment, with the worker travelling to and from home to a ‘permanent workplace’. Travel expenses were not deductible.*

Within the construction industry, contractors frequently find workers through an agency. Where the agency does not want to act as the employer, it may choose to use the services of an umbrella company, who employs the construction workers, enabling these individuals to work across multiple assignments.

Exchequer Solutions Limited was such an umbrella company, employing workers under an overarching contract of employment and providing them to agencies, who then supplied the workers to construction industry contractors.

The main issue was whether Exchequer Solutions Limited employed individuals on a continuous basis under the overarching contract of employment for all work assignments undertaken by the individuals. If this was the case, each workplace would have been a temporary workplace and travel expenses would be tax free.

Alternatively, as contended by HMRC, each individual assignment was covered by a separate contract for each job. This would mean that each workplace was a permanent workplace, with PAYE and NICs payable on then travel.

### *Decision*

The First Tier Tribunal found that Exchequer Solutions Limited was under no obligation to provide work or pay individuals when they were not working. Equally, the workers were under no obligation to carry out work through Exchequer Solutions Limited. With no ongoing contract of employment, a separate contract was created for each individual assignment. Travel and subsistence expenses were taxable as they were working at a permanent place of work.

*Exchequer Solutions Limited v HMRC (TC08506)*

## **Director or not?**

*Summary – The taxpayer's claim that he was not a director was rejected, meaning that the debt transfer notices for PAYE and NIC were valid.*

Having been made redundant, Nigel Gradidge decided to work for himself. Under the instructions of one of the agencies for which he worked, he used Think Accountancy Limited to set up a personal service company. He remembered completing forms to do with giving Think Accountancy Limited permission to deal with tax and other matters, but he claimed that he received nothing about being a director.

He was paid by a combination of low salary and dividends. He claimed that having always been an employee in the past, before signing up with Think Accountancy Limited, he contacted HMRC to confirm that being paid via a limited company in this way was common practice.

After some time, he became aware of press reports concerning Think Accountancy Limited and changed advisers. Subsequently, he applied to have his personal service company struck off.

Following an enquiry, HMRC found that Think Accountancy Limited was a managed service company provider, and Nigel Gradidge's company was a managed service company. HMRC issued PAYE and NIC determinations of around £31,000. With Nigel Gradidge's company struck off, HMRC issued debt transfer notices to transfer the liability to Nigel Gradidge personally.

Nigel Gradidge accepted that the managed service company rules applied but disputed that the debt could be transferred to him as he claimed that he was not a director. He claimed that, although he was shown as a director at Companies House, he was simply a worker and not a 'real' director. That role was effectively performed by Think Accountancy Limited.

#### *Decision*

The First Tier Tribunal found that Nigel Gradidge was legally a director of his personal service company. It was clear he knew that he was operating through a company as he had checked with HMRC that it was acceptable to operate in this way.

The First Tier Tribunal confirmed that the test in s.688A ITEPA 2003 does not require the individual to be a director at the time the notice is issued. To transfer the debt, the individual must have been a director at the time that the relevant debt accrued.

Nigel Gradidge's appeal was dismissed.

*Nigel Victor Gradidge v HMRC (TC08514)*

### **Loan derived from pension**

*Summary – A loan made to a taxpayer was an unauthorised member payment, making her liable to the unauthorised payment charge and surcharge. However, HMRC could not raise the assessment as the taxpayer had not acted carelessly.*

Elaine Curtis was described as 'honest' and 'hard working' who had to resort to payday loans because of financial difficulties. A colleague recommended a financial adviser. He arranged a loan of £20,000 for her with Blu Funding and recommended she move her occupational pension, which had a transfer value of nearly £50,000, from a previous employment to a new private pension with a company called Fast Pensions. Elaine did this, not knowing the transactions were connected.

Eventually, after repaying some £13,500 of the loan, she realised she had been badly advised and had, in effect, lost her pension.

Following an enquiry, HMRC decided the loan was derived from the Elaine Curtis' pension and, as such, was an unauthorised member payment (s.160 FA 2004). HMRC issued both an unauthorised payments charge and an unauthorised payments surcharge.

Elaine Curtis appealed.

#### *Decision*

The First Tier Tribunal found that the loan made to Elaine Curtis by Blu Funding was an unauthorised member payment, although she had no reason to know that was the case. She was therefore liable to the charge and surcharge.

However, HMRC was not entitled to make the assessment because it had not satisfied the conditions under s.29 TMA 1970. Elaine Curtis had not acted carelessly. She had no cause to suspect her loan from Blu Funding was connected with or conditional on the transfer of her pension to Fast Pensions. Neither was it reasonable to expect her, after HMRC began its enquiries, to carry out further research or appoint an adviser. She had no access to any of the information in HMRC's possession which identified the link between her pension and her loan and there was 'no way in which she could reasonably obtain that information'.

Further, the tribunal did not consider that, even if she had managed to contact the financial adviser or Fast Pensions, 'a reasonable taxpayer' might have discovered the possibility there had been an unauthorised payment.

However, in case it was wrong and the assessment was valid, the tribunal considered whether Elaine Curtis was liable to the surcharge. It concluded she was not. The judge said there was nothing more she could have done to avoid making the unauthorised payment. She obtained what she believed to be independent advice from an adviser recommended by a colleague. It appeared she had been the 'unfortunate victim of a scam'.

The appeal was allowed.

*Elaine Curtis v HMRC (TC08499)*

*Adapted from the case summary in Taxation (23 June 2022)*

### **Loan repayment not deductible**

*Summary – The cost of repaying a loan made to a company was not allowable expenditure when calculating the taxpayer's chargeable gain.*

At some unknown time, Everscot Limited had borrowed an unknown amount from the Royal Bank of Scotland.

Later, Ignatius Tedesco negotiated to sell the shares in Everscot Limited to the Glasgow MENA Cultural and Welfare Trust for £1.5 million. By the time of this sale, the cost of repaying the loan totalled £693,285 but under the sale agreement the shares would be sold free of this debt and so Ignatius Tedesco used the share proceeds to clear the debt.

On 30 April 2018, Ignatius Tedesco filed his 2016/17 tax return claiming:

- the repaid loan as a deduction in arriving at the chargeable gain;
- entrepreneurs' relief on the resultant gain.

On 14 February 2019, HMRC opened an enquiry into the 2016/17 return, accepting that Entrepreneurs Relief was available but querying the incidental costs deducted of some £705,000. Subsequently, HMRC issued a closure notice disallowing the expenditure incurred relating to the loan repayment.

Following an unsuccessful Statutory Review, Ignatius Tedesco appealed to the First Tier Tribunal.

### *Decision*

The First Tier Tribunal found that the debt repayment was not an allowable cost in calculating the reported chargeable gain. Although it increased the share value, the First Tier Tribunal concluded that:

“ the discharge of Everscot’s borrowing was not expenditure “on” the shares, and it was not expenditure that was reflected in the “state or nature” of the shares.”

As a result, the loan repayment costs did not meet the requirements of s.38(1)(b) TCGA 1992 and so did not reduce the taxable capital gain on the share disposal.

The appeal was dismissed.

*Ignatius Tedesco v HMRC TC08498*

### **One share short**

*Summary – With no evidence that other shareholders held shares on his behalf, his holding of less than 5% of a company meant he was ineligible for entrepreneurs’ relief on their sale.*

Badger Group (Holdings) Limited was the holding company for a group that carried on an estate agency business. Seamus Kavanagh was both director and shareholder of this company.

Seamus Kavanagh had originally held shares in another company but following a share for share exchange, he acquired 1,842 shares, just under 5% , in Badger Group (Holdings) Limited, with three other shareholders holding the remaining shares.

On 31 January 2017, Badger Group (Holdings) Limited was sold to a third party, with Seamus Kavanagh receiving exactly 5% of the total proceeds. He reported his gain in his 2016/17 and claimed entrepreneurs’ relief.

The issue in this case was whether he held at least 5% of the company’s ordinary share capital and voting rights for the 12 months ending with the date of disposal. HMRC argued that he held 4.997% of Badger’s ordinary shares rather than the necessary 5% and so denied the relief.

Seamus Kavanagh appealed, arguing that the other shareholders held 0.003% of the shares on trust for him, making him the beneficial owner of 5% in total and, so eligible for entrepreneurs’ relief.

### *Decision*

The First Tier Tribunal found that there was no agreement or understanding that any shares not registered in Seamus Kavanagh’s name were held by any of the other shareholders on his behalf. Indeed, the shareholders’ agreement stated that each of the registered owners was the beneficial owner of their own shares.

At no point had Seamus Kavanagh questioned receiving dividends based on 1,842 shares, rather than on a 5% holding that he claimed to have.

The appeal was dismissed.

*Seamus Kavanagh v HMRC [2022] TC08500*

## Period of ownership for PPR

*Summary - Period of ownership for PPR relief meant 'the period of ownership of the dwelling house that is being sold' and not from when the land was bought.*

On 26 October 2010, Gerald and Sarah Lee jointly purchased a plot of land for £1,679,000. The original house on the land was demolished and a new house built in its place that was completed on 15 March 2013. Four days later, they took up residence in the new house. In May 2014, the couple sold the property for £5,995,000.

This appeal related to the 'period of ownership' for principal private residence relief. As was stated in Taxation (23 June 2022), did the period of ownership for only or main residence relief purposes cover the:

- 43 months between the acquisition of the land on which the house was demolished and the sale of the land with the house that was subsequently built, or
- Period between the date the newly developed house was completed and disposal?

HMRC argued that as a matter of construction, period of ownership in the legislation clearly refers to land. The couple acquired, owned and disposed of a single asset, being an interest in land. They made changes to that asset by demolishing the house which was part of that interest in land at the time of acquisition and constructing a new house. As a result, HMRC then calculated the principal private residence relief due as 18/43 of the gain, being the last 18 months of ownership.

The couple stated that the legislation was clear that 'period of ownership' related to the dwelling house and under s.223(1) TCGA 1992, no part of a gain shall be a chargeable gain if the dwelling-house or part of a dwelling-house has been the individual's only or main residence throughout the period of ownership.

### *Decision*

The First Tier Tribunal concluded that the legislation contained no clear definition of period of ownership. On a natural reading, 'period of ownership' meant the 'the period of ownership of the dwelling house that is being sold'. The Tribunal commented that no mention is made of land in reference to 'period of ownership' in the legislation.

Consequently, the couple's appeal was allowed.

*Gerald Lee and Sarah Lee v HMRC (TC08502)*