

Personal tax update (Lecture P1386 – 18.22 minutes)

Dividends were not wages

Summary – Backdated payslips did not make earlier payments become salary eligible for Coronavirus Job Retention Scheme grants.

Zoe Shisha Events Limited operated a shisha establishment, based at an outdoor terrace of a central London hotel. It served shisha, drinks, and food.

On 11 March 2020 the company closed due to the COVID pandemic.

The company made claims under the CJRS for:

- its director, Ms Muntean who was paid a salary of £3,000 per month;
- Mr El Sayed, an employee who was paid a salary of £1,280 per month.

HMRC opened a compliance check. When asked to supply evidence to support the salaries paid, the company's RTI returns showed that Ms Muntean was being paid £600 a month but the furlough claim was based on a salary of £3,000 a month. Ms Muntean accepted that prior to January 2020, her salary had been £600 per month but that this had increased to £3,000 per month from the start of 2020. She stated:

“I was being paid £3,000 a month from January 2020, the accountant was previously putting through £600 a month and they explained that the rest was in dividend. I did repeatedly ask different accountants to change this for me so that everything went through PAYE”.

HMRC raised assessments arguing that the RTI figures on which the CJRS claims were based, were overstated.

The company appealed.

Decision

The First Tier Tribunal found that the claim relating to the company's employee was correct as bank statements for the period to 19 March 2020 showed that he was paid £1,280.

Moving to the director's claim, the First Tier Tribunal found that there was no evidence to support the claim that her monthly salary would be increased to £3,000 before 19 March 2020 as claimed:

- The Tribunal recognised that the payments made to Ms Muntean for January and February 2020 exceeded £600 per month, but they were not satisfied that the payments over and above £600 were salary. Rather, they were “most probably dividend payments made in accordance with the advice given by the accountant”. The Tribunal stated that the company could have supplied bank statements for earlier periods to demonstrate that there was a change in the way payments were made to in January and February 2020, but it failed to do so.

- The last RTI submissions made by the company were for the period up to August 2019. These submissions showed Ms Muntean's salary as £600 per month. No RTI submissions showing her salary as £3,000 per month were filed with HMRC until after the CJRS was announced and these submissions could not be said to provide contemporaneous evidence that her salary had been increased prior to 19 March 2020.
- The payslips for January and February 2020 showing Ms Muntean's salary as £3,000 per month were not created until June 2020. Those payslips did not, then, provide contemporaneous evidence that Ms Muntean's salary had been increased prior to 19 March 2020.

With the RTI documents and payslips for the relevant period being filed/ created after the CJRS was announced, there was no evidence to support the director's CJRS claim.

Zoe Shisha Events Limited v HMRC (TC08805)

Doctored CJRS documents

Summary – Bank statements and RTI submissions had been deliberately manipulated meaning that the CJRS conditions were not met.

Top-Notch Accountants Limited, whose sole director is Mr Islam, provided accounting, auditing and tax services.

The company made claims under the CJRS for an employee who had started work in December 2019.

In October 2020, HMRC opened a check into these claims and subsequently noted that the bank statements appeared to have been amended and included a number of transactions where the font had been varied and spelling mistakes made.

HMRC concluded the claims made were not valid because the employee had not been included in a RTI submission before 19 March 2020. Information held by HMRC confirmed that they had only been notified of the employee's earnings on an RTI submission received in April 2020.

Top-Notch Accountants Limited claimed that they had:

- submitted earlier RTI submissions, but HMRC had not received them;
- contacted HMRC several times but HMRC had no record of any calls.

HMRC raised assessments to recover the support payments and the company appealed.

Decision

The First Tier Tribunal stated that the company's director was not a credible witness and the evidence supplied contained 'at a minimum' significant incongruities. Bank statements had been obviously altered, and so too had the RTI submission statements. These contained 'Correlation IDs' supposedly relating to payments made in January, February and March 2020 but which in fact correlated with IDs on submissions received by HMRC in May 2020.

On the balance of probabilities, the First Tier Tribunal found that RTI submission deadline of 19 March 2020 had not been met, meaning that the claims were invalid.

The appeal was dismissed.

Top-Notch Accountants Limited v HMRC (TC08833)

No CJRS when RTI returns submitted late

Summary – Claims under the Coronavirus Job Retention Scheme (CJRS) relating to six new employees failed as they had not been included in an RTI return before the 19 March 2020 deadline.

Raystra Healthcare Limited failed to submit RTI returns between 13 November 2019 until 24 April 2020, claiming that this was due to an upgrade in their payroll software, which had been accidentally set to 'test' mode, meaning that RTI returns were not submitted.

The company became aware of the issue on 24 April 2020, and rectified the matter by submitting returns on the same day.

Between 30 April 2020 and 25 August 2020, the company applied for and received payments under the Coronavirus Job Retention Scheme (CJRS). These included payments relating to six new employees who, as a result of the software upgrade issue, had not been included in any RTI return submitted before 19 March 2020.

Following a check on the company's claims, HMRC sought to recover the CJRS payments made, even though failure to submit the relevant RTI returns was due to a technical error.

Decision

The First Tier Tribunal found that there was no flexibility in how the CJRS rules operated and so found in HMRC's favour stating:

'Neither the CJRS wording nor the surrounding legislation, provides for any exception to this particular requirement in circumstances where an employee was in fact employed prior to 19 March 2020, and where the failure to submit a RTI return prior to that date showing payment of earnings to that employee was due to circumstances that are not the employer's fault.'

The First Tier Tribunal had no power to allow the appeal on compassionate grounds.

The appeal was dismissed.

Raystra Healthcare Limited v HMRC (TC08838)

Severance payment and ANI

Summary – With the disability element of her severance payment covered by the disability exemption, the taxpayer was not liable to the high-income child benefit charge.

Nicky Howard-Ravenspine was employed by Norton Rose Fulbright Services and had suffered from ill-health since June 2012.

In April 2016, no longer able to carry out her role due to her ill-health, she reached a termination agreement with her employer.

Under the agreement, she received:

- £12,057.06 in lieu of accrued but un-taken holiday;
- a severance payment of £93,357 as “compensation for loss of office and termination”.

In 2019, on the basis that her adjusted net income for 2016/17 exceeded the £50,000 threshold, HMRC raised a discovery assessment to collect the high income child benefit charge (HICBC) that it believed was payable. HMRC believed that none of the payment fell within the disability exemption contained at s.406(1)(b) ITEPA 2003. HMRC argued that although there was a medical condition preventing her from carrying out her employment duties, the payment did not relate solely to that health issue. It was paid for compensation for loss of office as well as disability and so the exemption could not apply.

Nicky Howard-Ravenspine appealed.

Decision

Although the termination agreement stated that the payment was a single sum paid as compensation for loss of office, the First Tier Tribunal found that “a very significant element of the severance payment was on account of disability” and so qualified for the disability exemption.

As stated in HMRC's own guidance –Employment Income Manual at EIM13637 this was not an all or nothing situation and ‘an apportionment may be necessary’.

The First Tier Tribunal found that:

- the payment did fall within the disability exemption;
- the taxpayer’s adjusted net income for 2016/2017 was less than £50,000;
- she was not liable to the HICBC as assessed by HMRC.

Nicky Howard-Ravenspine v HMRC (TC08831)

HICBC and divorce

Summary – Despite being divorced and having remarried, the taxpayer was still liable to the High Income Child Benefit Charge (HICBC) as he was still entitled to the Child Benefit paid to his ex-wife.

Mr Meades married in March 2010 and just over two years later his wife had a child. He claimed Child Benefit, which was paid into the bank account of the child’s mother.

By April 2019, the couple had divorced, with the child and their mother remaining in the family home and Mr Meades paying the household bills, including the mortgage and maintenance.

In November 2019, Mr Meades married his second wife and they lived together for the whole of 2019/20.

Having enquired into Mr Meades' 2019/20 tax return, HMRC issued a closure notice increasing his liability by £1,076 on the basis that he was liable to HICBC as his Adjusted Net Income (ANI) exceeded £50,000, and Condition B applied.

Mr Meades appealed.

Decision

Condition B would have applied if the child's mother had been Mr Meades partner during 2019/20. The First Tier Tribunal found that this was not the case as during this time he had been living with his new partner.

The First Tier Tribunal decided it was necessary to consider whether Mr Meades came within Condition A.

Firstly, Mr Meades needed to be entitled to Child Benefit in 2019/20. Although the child's mother was entitled to Child Benefit because the child lived with her, Mr Meades was also entitled because he provided financial support for the child. With the Child Benefit having already been awarded to Mr Meade, the benefit remained with him.

Secondly, the First Tier Tribunal observed that it was surprising that Mr Meades' liability to the HICBC could depend on the income of his second wife, who was not related to the Child. Bizarrely, if Mrs Meades had the higher ANI, Mr Meades would not be liable to the HICBC. However, in this case, Mr Meades did have the higher ANI and he was so liable.

Finally, the Tribunal commented that had Mr Meades cancelled the Child Benefit claim before 6 April 2019, the child's mother could have made a fresh claim and Mr Meades would not have been liable to the charge.

The appeal was dismissed.

Mr Meades V HMRC (TC08844)

UK domicile of choice

Summary – With no compelling evidence to support a planned move back to India, the deceased had acquired a UK domicile of choice.

Anantrai Maneklal Shah was born in 1929 in Karachi. Despite his parents moving to Tanzania, he attended both school and university in India, living with a member of the extended family. On graduation, he moved to Tanzania to live with his parents.

Around 1954 he moved to the UK to study pharmacy but on graduation in 1957 he returned to live in Tanzania, with his family, following his father's death. Later, he married in Mumbai, India but continued to live in Tanzania with his wife and later, his two children who were born there.

When Tanzania became independent from the UK in 1961, he gave up his Indian Citizenship and became a British citizen. In 1972, believing Tanzania to be no longer safe, the family moved for a short period to India but about a year later, the family (including his mother) moved to the UK, where he worked as a pharmacist, owning his own business for a period but having sold that business in 1994, he then locumed until at least 1997.

His daughter and wife having died, Anantrai Maneklal Shah spent two months in intensive care in 2010; further, he had both knees replaced, a pacemaker fitted and two cataract operations. He sold his house and moved into a rented flat in London to be near his son and his family.

In 2014 he made two wills, one under UK law for UK assets and one under Indian law for non-UK assets. Neither will mentioned funeral arrangements or for a ceremony to be held in India. He owned no Indian property and had no Indian bank account.

He died on 7 June 2016, having only ever made two trips back to India since the 1970s. HMRC issued a notice of determination under s.221 IHTA 1984 stating that he was domiciled in England and Wales at the time of his death.

Arguing that he had intended to return to India but had died before he could realise this wish, his executor appealed, claiming that his place of domicile was India.

Decision

The First Tier Tribunal found that, at best, Mr Shah had only 'a vague and floating idea' of returning to India at some point.

A Form DOM1 was presented at appeal but this had not been filed with HMRC. Indeed, he had no real connections with India. His close family remained in the UK. No compelling evidence was presented to demonstrate that he had plans in place to retire back to India. Consequently, with his life settled in the UK, he had a domicile of choice in the UK.

Ameet Shah (as Executor of the Estate of Anantrai Maneklal Shah Deceased v HMRC (TC08842)