

Personal tax round up

(P1226 – 22.13 minutes)

Virtual party time

The ICAEW has reported that HMRC has confirmed that the annual £150 per employee party exemption can apply to virtual events.

HMRC has confirmed that their guidance will shortly be updated to reflect this but according to the ICAEW has stated:

"Therefore, the cost of providing food, entertainment, equipment and other expenses which may be incurred in hosting a virtual event, will be exempt, subject to the normal conditions of the exemption being met.

"It is important to note that the intention of the exemption is to allow for costs of provision which are generally incurred for the purposes of the event itself, and that the event, along with any associated provision, is available to employees generally."

https://www.icaew.com/insights/tax-news/2020/nov-2020/hmrc-clarifies-treatment-of-virtual-christmas-parties?utm_campaign=Members%20-%20ICAEW&utm_medium=email&utm_source=1618817_Faculties_TAXnewswire_25Nov20_PO&utm_content=HMRC%20clarifies%20treatment%20of%20virtual%20Christmas%20parties&dm_i=47WY,YP35,6FC2II,4BSMY,1

Personal Liability Notice to cover unpaid NICs

Summary – A company's unpaid Class 1 NICs was attributable to the neglect of the taxpayer, the officer who was fully responsible for the company's financial affairs. A Personal Liability Notice assessing the full £233,000 was correctly issued for 2010/11.

David Unwin was a director at HCL Equipment Contracts Limited, a failed company that had gone into administration in 2014. He was chairman and managing director; he alone was responsible for the strategic and financial matters of the company, authorising the payroll costs, setting up and signatory to the company bank account, managing creditor payments. Management accounts were prepared for him only. He was clearly an officer of the company throughout 2010/11.

HCL Equipment Contracts Limited's accounts for the two years to 31 December 2011 showed 55 employees, and a large tax creditor. Wages and salaries were in excess of £1,500,000 for both years. No corporation tax was due as the company had used brought forward losses.

In 2010/11, the employees had been paid net of PAYE and NIC. However, the company had made no payments of PAYE or NIC to HMRC and filed a nil employer return (Form P35). HMRC's payroll analysis for the period showed Class 1 NICs totalling £213,822, all of which was outstanding.

HMRC became aware of the unpaid NIC as a result of an investigation into Caledonian Mining Ltd. David Unwin argued that the company had transferred its employees to a related party, Caledonian Mining Ltd and that this company had subsequently provided agency staff for its projects. The administrator supplied a bank statement, which showed payments made to the related party in February and March 2011 for amounts related to PAYE and NIC. However, for each payment made, there was a contra payment back the same day, less what seemed to HMRC to be an administration charge.

David Unwin argued that the payment back related to equipment sold, but he provided no evidence to support this claim. Consequently, he argued that any NIC liability was Caledonian Mining Ltd's responsibility. He claimed that the employment details in the company's accounts were for agency staff, and that the tax creditor related to VAT, not NIC.

HMRC considered him an experienced company director, but one who had since been disqualified as a result of an insolvency service investigation into a company called Wrekin Construction Company Limited and a similar payroll set up where Unwin stated:

I intended that there would be a default in the payment of Wrekin's liability to HMRC for PAYE/NIC in that any monies paid by Wrekin to BMS (the 3rd party company) in respect of Wrekin's PAYE/NIC liability would not be paid by BMS to HMRC as and when payment fell due, but rather the said monies ... would be utilised amongst other companies of which I was a director and ultimate controlling party."

As a result of that investigation, in 2013, Unwin was disqualified from acting as a company director for 10 years.

Decision

The First Tier Tribunal concluded that David Unwin was not a reliable witness. No evidence was produced to support his claims. The Tribunal concluded that the audited accounts correctly showed a creditor of almost £700,000 in respect of unpaid PAYE and NIC.

The First Tier Tribunal found that that David Unwin was reinventing the wheel. He was simply substituting HCL Equipment Contracts Limited for Wrekin and Caledonian Mining Ltd for BMS, but in this case almost all the payment to Caledonian Mining Ltd was immediately paid straight back to HCL Equipment Contracts Limited.

Having concluded that the unpaid NIC liability properly belonged to HCL Equipment Contracts Limited, the Tribunal went on to conclude that the failure to pay that liability was attributable David Unwin's neglect. He was an experienced company director, aware of his responsibilities. A company director taking reasonable precautions would have ensured that the NIC liabilities were paid to HMRC in the correct amounts on the due dates. As the officer fully responsible for the financial affairs of HCL Equipment Contracts Limited, the Personal Liability Notice was correctly issued for the assessed amount.

The appeal was dismissed.

Mr David J Unwin v HMRC (TC07837)

High Income Child Benefit Charge

Summary – The taxpayer had a reasonable excuse for failing to notify his liability to the Higher Income Child Benefit Charge and the penalties were cancelled.

Andrew O'Connor, his wife and young children lived in Australia for ten years, returning to the UK in July 2015.

Shortly after their return to the UK, his wife completed a child benefit application form. The form contained information about the Higher Income Child Benefit Charge (HICBC) and the £50,000 income threshold that applied.

Andrew O'Connor did not notify HMRC that he was chargeable to income tax for the tax year in question, within six months of the end of those tax years. Nor did he receive notice to file a tax return from HMRC.

However, in October 2019, HMRC wrote to him informing him that he might be liable to the HICBC. Shortly after this, Andrew O'Connor provided information to HMRC and paid the amount owing for the tax year in question as well as the subsequent tax year; and his wife cancelled the child benefit claim.

HMRC raised a "failure to notify" penalty assessment for 2016/17 only, calculated as 10% of potential lost revenue. HMRC did not raise such a penalty for the 2017/18 tax year because they regarded his disclosure for that year as "unprompted" and made less than 12 months after the tax in question first became unpaid by reason of the failure to notify.

Andrew O'Connor appealed against the penalty, saying he had a reasonable excuse because he had been in Australia when the charge was introduced.

Decision

The First Tier Tribunal accepted Andrew O'Connor's argument as reasonable. He did not become aware of the charge until HMRC wrote to him about it because his wife did not pass on the information.

Although his wife may not have acted as a reasonably conscientious taxpayer, he was not his wife.

The Tribunal stated that:

"It cannot be said that because Mr O'Connor left the claiming of child benefit to his wife, and did not enquire actively with her as to what information was on the child benefit form, that he fell short of what would be expected of a reasonably conscientious taxpayer."

Andrew O'Connor therefore had a reasonable excuse for 2016-17 and no penalty was due.

Andrew O'Connor v HMRC (TC07833)

Studying in the UK – no tax to pay

Summary – A student's appeal, against a reduced repayment claim resulting from what HMRC claim was underpaid tax from an earlier year of tax, has not been struck out and the case will be heard at a later date.

Mohammed Uddin is a Bangladeshi national who studied in the UK between 10 August 2009 and July 2014, returning to Bangladesh in October of that year. While in the UK he worked on a part-time basis, and income tax was deducted from his earnings.

Under Article 19 of the UK-Bangladesh DTC 1980 a student in Mr Uddin's position was not liable to UK tax on his earnings. In February 2018, solicitors acting on his behalf submitted a claim for the repayment of tax paid in 2012/13 through to 2016/17.

HMRC made a repayment for 2013/14 and 2014/15, but not for 2012/13 because that claim was outside the four-year time limit (s43 TMA1970). However, before making the repayment for 2013/14 and 2014/15, HMRC deducted an underpayment of tax, which they said had arisen in relation to his work during 2012/13.

Mohammed Uddin's solicitors appealed against HMRC's decision, on the basis that HMRC had no right to refuse to repay the 2012/13 tax, or to deduct tax underpayments from subsequent years, because the Double Tax Convention gave Mr Uddin an exemption from tax for five years, and this took priority over the TMA.

Two issues were raised by the appeal:

1. Was HMRC correct to refuse to repay the tax deducted from his earnings in 2012/13 on the basis that the claim was made outside the four-year time limit? and
2. Was HMRC correct to reduce the tax repayment in relation to 2013/14 and 2014/15 to recover tax Mohammed Uddin's underpaid in 2012/13?

In January 2020, HMRC applied to strike out this appeal on the basis that the Tribunal had no jurisdiction to hear a claim made outside the statutory time limits.

Decision

The First Tier Tribunal concluded that HMRC were correct that a claim for repayment had to be made within the four years and that the Tribunal had no jurisdiction to consider Mohammed Uddin's appeal to the extent that it concerned the claim to repay the tax deducted from his earnings in 2012/13.

However, the appeal was also about HMRC's reduction of the amount repaid for 2013/14 and 2014/15, by deducting what they said was a tax underpayment from 2012/13. The Tribunal does have the jurisdiction to consider this issue. The Tribunal were not clear what this underpayment of tax related to as under the Double Tax Convention Mohammed Uddin was not liable for tax in 2012/13, so there could well be a case here.

His appeal will in due course be determined by the Tribunal, but only in relation to whether HMRC were correct to reduce the repayment made for 2013/14 and 2014/15 by making an offset relating to 2012/13.

Mohammed Masbah Uddin v HMRC (TC07918)

The future of CGT

In July 2020, the Chancellor asked Office of Tax Simplification (OTS) to take a look at our Capital Gains Tax system and ‘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 November, the OTS published the first part of its report, which highlights features of Capital Gains Tax that may distort behaviour or make things complex in practice. The report flags up that a number of areas that, at this stage, have not been considered: trusts, the attribution of offshore gains to UK resident individuals and an individual’s arrival or departure from the UK.

The OTS has reported on a number of areas and made recommendations, linked to the potential aims of government policy.

Alignment of rates and address boundary issues boundaries (CGT and IT)

If the simplification priority is to reduce distortions to behaviour, it should either consider:

- more closely aligning Capital Gains Tax and Income Tax rates; or
- addressing boundary issues as between Capital Gains Tax and Income Tax.

If the government considers more closely aligning Capital Gains Tax and Income Tax rates it should also consider:

- reintroducing a form of relief for inflationary gains;
- the interactions with the tax position of companies; and
- allowing a more flexible use of capital losses.

If there remains a disparity between Capital Gains Tax rates and Income Tax rates and the government wishes to make tax liabilities easier to understand and predict, it should consider reducing the number of Capital Gains Tax rates and the extent to which liabilities depend on the level of a taxpayer’s income.

If the government considers addressing Capital Gains Tax and Income Tax boundary issues, it should consider:

- whether employees and owner-managers’ rewards from personal labour (as distinct from capital investment) are treated consistently;
- taxing more of the share-based rewards arising from employment, and of the accumulated retained earnings in smaller companies, at Income Tax rates.

Reducing the annual exempt amount

If the government’s policy is that the Annual Exempt Amount is intended mainly to operate as an administrative de minimis, it should consider reducing its level.

If the government does reduce the Annual Exempt Amount, it should consider:

- reforming the current chattels exemption by introducing a broader exemption for personal effects, with only specific categories of assets being taxable;
- formalising the administrative arrangements for the real time capital gains service, and linking up these returns to the Personal Tax Account; and
- exploring requiring investment managers and others to report Capital Gains Tax information to taxpayers and HMRC, to make tax compliance easier for individuals.

Capital transfers and the CGT uplift on death

The OTS concluded that taxpayers should not get both an Inheritance Tax exemption and a Capital Gains Tax death uplift and so recommended:

- Where a relief or exemption from Inheritance Tax applies, the government should consider removing the capital gains uplift on death, and instead provide that the recipient is treated as acquiring the assets at the historic base cost of the person who has died.
- The government could consider removing the capital gains uplift on death more widely, and instead provide that the person inheriting the asset is treated as acquiring the assets at the historic base cost of the person who has died but consider:
 - a rebasing of all assets, perhaps to the year 2000; and
 - extending Gift Holdover Relief to a broader range of assets.

Business Assets Disposal Relief

If this is considered to be a relief that is available on retirement, the government should consider replacing Business Asset Disposal Relief with a relief more focused on retirement of the owner manager, increasing the ownership percentage and period of ownership as well as setting a qualifying age.

The government should abolish Investors' Relief as there has been little interest in this relief.

Principal Private Residence relief

When the review was announced, many people thought that taxpayers' principal private residence might be targeted but there is no mention of this in the report.

What next?

We expect to see the second part of the OTS findings early in 2021. This will focus on technical and administrative issues.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/935073/Capital_Gains_Tax_stage_1_report_-_Nov_2020_-_web_copy.pdf

Disposal of residence - extent of permitted land

Summary – A Property that included 0.94 hectares of land was sold to a developer and the gain covered by Principal Private Residence relief (PPR).

In 1997, Leslie and Catherine Phillips had bought a property consisting of a five-bedroomed main house, garage for three cars, a one-bedroom cottage, swimming pool and substantial gardens extending to 0.94 hectares.

In 2014, the property and land were sold to a developer, but the couple did not report the disposal on their tax returns as they believed that PPR relief applied to the gain.

In 2017, following a review of SDLT records, HMRC discovered the disposal. In their view, the property was not of a size and character that required grounds of more than the standard statutory maximum of 0.5 hectares. In October 2018, HMRC issued discovery assessments for £162,820 to both Leslie and Catherine Phillips, representing capital gains tax on the excess 0.44 of a hectare.

The couple appealed against these assessments arguing that the land was required for the reasonable enjoyment of the property and therefore formed part of the “permitted area” to which PPR relief applied.

Decision

The First Tier Tribunal were satisfied that the evidence provided by the couple demonstrated that other properties in the area were at least the same size, with some having larger gardens.

HMRC’s expert witness provided less convincing evidence as it showed details of properties that were smaller and in more built-up areas.

The First Tier Tribunal also stated that the property photos provided as evidence showed a natural tree border around the edge of the property, a factor that can be helpful when justifying a larger permitted area.

In conclusion, taking into account the size and character of the house, the 0.94 hectares was required for the reasonable enjoyment of the house and so qualified for PPR relief.

The appeal was allowed and so the discovery assessments were reduced to nil.

Leslie Phillips, Catherine Phillips v HMRC (TC07859)

No combined apartment

Summary – When two apartments were bought with the intention of combining them into one, a refund of the 3% SDLT surcharge was not due. The buyers did not intend to live in the second flat as their only or main residence until it was amalgamated with the first.

The taxpayers owned a dwelling in Dubai that they lived in as their only or main residence. In May 2017, they bought two adjoining apartments (Flats 31 and 38), paying the 3% SDLT surcharge on both. The total SDLT paid was close to £1.7 million.

Later, the taxpayers sold their main residence in Dubai and moved into the flats, with the couple living mainly in Flat 31 but their children and any guests living in Flat 38.

They used an outside balcony to connect the two. The couple did not consider either Flat 31 or Flat 38 on its own to be a suitable residence for them and their family. They only bought both apartments on the basis that they would carry out works to convert them into one residential property. Consequently, they claimed a refund of the 3% SDLT supplement on both properties, arguing that they planned to combine the flats for them to become their single main residence.

HMRC granted a refund of SDLT in respect of Flat 31 but not Flat 38. By the time of the appeal, HMRC believed that the taxpayers were not entitled to a refund on either flat, but were time barred from correcting the refund given relating to Flat 31. Consequently, this appeal was limited to the second purchase.

Decision

To reach their decision, the First Tier Tribunal stated that it was important to consider the buyers' position at the effective date of the acquisition of Flat 38; intention was not relevant.

On completion, the new property was not their only or main residence and therefore, the buyers were not entitled to a refund of the higher 3% rates.

The appeal was dismissed.

Mehdi Moaref and Armaghan Mozhdeh v HMRC (TC07873)

Holiday property rental business and SDLT

Summary – The company should have paid 15% SDLT as the property was not acquired exclusively for use in a rental property business. However, the chargeable consideration was halved, as a trust's shareholding could be attributed to the other shareholder, but not also to her husband.

Waterside Escapes Ltd ran a holiday property rental business.

In June 2015, the company bought a property from Bewl Holiday Homes LLP for £1,250,000 and paid SDLT totalling £68,750 on the basis that it had acquired the property exclusively for the purposes of its holiday letting business.

The LLP's members were a married couple, each holding a 50% interest in the partnership. The wife also held 50% of the shares in Waterside Escapes Ltd, with the remaining shares being held by a trust whose shares were acquired on the day that the property was bought.

On appeal, there were two issues to consider:

1. The occupation issue and whether the 15% SDLT rate applied.
2. The SLP ("sum of the lower proportions") SDLT issue, specifically whether the chargeable consideration should be reduced as the company acquired the property from a connected limited liability partnership.

Decision

The First Tier Tribunal rejected Waterside Escapes Ltd's argument that the 15% rate did not apply, as the property was not acquired exclusively for use in a rental business. The Shareholders' Agreement allowed shareholders to use the property for up to five days per annum. The Tribunal concluded that the 15% rate should have been paid as a non-qualifying individual was permitted to occupy the property for up to five days a year.

On the second issue, HMRC agreed that the chargeable consideration should be reduced by 50% to reflect the wife's 50% interest in both the LLP and Waterside Escapes Ltd, and the fact that she was associated with the trust. As a fellow shareholder, the trusts shareholding could be attributed to her when considering control. Moving on to consider her husband, the wife's 50% shareholding in Waterside Escapes Ltd could be attributed to her husband but the trust's shareholding could not. Even with her rights attributed to him, he was still only treated as having 50% of the shares, whereas s.450(3)(a) CTA 2010 states that the "greater part" of the share capital is required for him to be associated with Waterside Escapes Ltd and so make the SLP 100. The chargeable consideration was therefore not reducible to nil, and 15% SDLT was payable on half of the total consideration paid.

Consequently, the chargeable consideration for the acquisition was reduced by 50% from £1,250,000 to £625,000 and with the 15% higher rate applying, the SDLT charge should have been £93,750 and not the £187,500 charged by the Closure Notice.

Waterside Escapes Ltd v HMRC (TC07881)

COVID-19 was not special circumstances

Summary – COVID-19 did not constitute special circumstances, so penalties imposed for failure to file RTI returns were upheld.

Cherwell Optical Limited appealed against penalties that HMRC imposed for a failure to file a number of PAYE Real Time Information (RTI) returns on time, citing COVID-19 as special circumstances. The periods affected were those ending 5 June 2019, 5 August 2019, 5 September 2019 and 5 October 2019(!).

The company's grounds for appealing against the penalties were:

- The company made irregular payments to employees, one of whom is full time and one part time/casual;
- It had been trading for ten years and had not previously incurred such penalties,
- The penalties place an excessive burden on small businesses.

Cherwell Optical Limited stated that the company accepted HMRC's review decision but requested a "special reduction" because the company was now non-operational and in negative cash flow owing to the COVID-19 lockdown.

HMRC submitted that a special reduction was not appropriate because:

- any consideration of special reduction would apply to the original penalties and the circumstances at the time that resulted in those failures and not more recent events such as the COVID-19 pandemic;

- ability to pay was not a special circumstance.

Decision

The First Tier Tribunal confirmed that a special reduction could only apply to the circumstances that applied at the time of the failures.

In this case, since HMRC's review letter was dated 16 March 2020, shortly before lockdown started, HMRC could not be expected to take into account the consequences of the subsequent COVID-19 lockdown. Although the pandemic may well affect other cases, that was not the position here. There were no special circumstances in this case.

The Tribunal agreed with HMRC concluding that if the company has been affected by COVID-19 and any restrictions imposed, they can contact HMRC's COVID-19 helpline to discuss a possible deferment of payment.

The appeal was dismissed.

Cherwell Optical Limited v HMRC (TC07852)

Penalties cancelled

Summary – A South African couple had daily and six-month late penalties cancelled due to their accountant attending to his sick father. Only the three-month filing penalty was due.

Christopher and Madeleine Stokes lived in South Africa, and for several years they had earned rental income from UK property. On or around 6 April 2018, HMRC sent both Christopher and Madeleine Stokes a notice to file a tax return for the 2017/18 tax year, with a due date for filing electronically of 31 January 2019.

The couple had appointed Mr James as their UK accountant and tax agent. Having already missed the January 2019 filing deadline, Christopher Stokes sent Mr James the information required to file the tax returns on 17 June 2019. Unfortunately, Mr James' father was seriously ill in hospital from April 2019 up until he died on 15 June 2019, with Mr James by his side. After his father's death, much of Mr James' time was taken up dealing with his father's affairs.

HMRC received the tax returns electronically on 18 August 2019 and proceeded to impose a £100 late filing penalty that was not appealed against, a £300 "six-month" penalty and daily penalties totalling £900.

The question in these appeals was whether

- there was a "reasonable excuse" for Christopher and Madeleine Stokes' failure to submit the tax returns on time; and/or
- owing to the presence of "special circumstances", the amount of the penalties should have been reduced.

Decision

Based on the information that had been received on 17 June 2019, the First Tier Tribunal concluded that Mr James would have taken about a week to prepare and submit the couple's tax returns. That would have made the filing date 24 June 2019.

The excuse given for not filing the tax returns prior to 24 June 2019 was that the accountant had not sent his usual reminder. In the Tribunal's view reasonably careful taxpayers, including those living abroad and receiving UK property income, would make themselves aware of the filing deadlines and would contact their accountants if they had not heard from them by the time of the deadline. The couple did not take such action and so there was no reasonable excuse for their failure to file their returns prior to 24 June 2019.

The Tribunal concluded that the couple's excuse for not filing on or after 24 June 2019 was reasonable as they had chased up Mr James at regular intervals in order to avoid further delay in the filing their returns. As a result, both the "six-month" and daily penalties accruing from 24 June 2019 should be cancelled.

Could special circumstances apply to the penalties before 24th June 2019? The Tribunal went on to conclude that the illness of Mr James' father, causing him to devote less time to his clients than he normally would have, was a special circumstance. Mr James did not send his clients the reminders he would ordinarily have sent prior to the time when daily penalties started to accrue. Although this does not provide a reasonable excuse for late filing, had such reminders been sent, the Tribunal concluded that the couple would in all likelihood have provided the necessary information to Mr James in time to avoid any daily penalties accruing. On this basis, due to these special circumstances, the daily penalties were reduced to nil.

The appeal was allowed and the contested penalties cancelled.

Christopher and Madeleine Stokes v HMRC (TC077836)