

Personal tax round up

Spread betting employment income

Summary – The use of spread betting and linked hedging transactions was a disguised remuneration plan; payments to individuals were liable to income tax and NICs.

Root 2 Tax Limited was incorporated in 2011 to carry on a tax consultancy business. At all relevant times, the individuals referred to in this case were the sole directors and shareholders of the company.

The appeal relates to three sets of “spread bets” and related option arrangements that the individuals and the company entered into in the tax year 2012/13. It was accepted by both parties that these arrangements were undertaken under a structure known as “Alchemy” which many of the company’s clients also undertook. In a previous case, *HMRC v Root2Tax Limited* [2017] UKFTT 696, the Tribunal held that Root 2 Tax Limited was required to disclose this avoidance scheme to HMRC.

Andrew Hubbard provided a neat summary of the case as follows:

“The scheme involved here is complex but essentially it involved the employee taking out a spread betting contract and at the same time hedging the risk with an equal and opposite contract. The employer took over the hedging contract so if the bet was won, the employee obtained the winnings and the employer paid out a broadly similar amount to the provider of the hedge. The result was that the employee ended up with a sum of money and the employer had paid out a similar sum as a cost.”

HMRC’s argued that the relevant payments as part of the arrangements were liable to income tax and NICs as employment income.

Root 2 Tax Limited argued that the arrangements triggered minimal tax liabilities as the majority of the individuals’ returns were received as tax free “winnings” from gambling under “spread bets”.

Decision

Unsurprisingly, the First Tier Tribunal concluded that the betting and hedging transactions were merely a vehicle to provide employment income to the individuals and that income tax and NICs were due.

Andrew Hubbard stated:

“... the decision of the Supreme Court in the *Rangers* case about the wide scope of employment income has given HMRC a powerful new weapon in its armoury against attempts to avoid PAYE and NIC. Indeed, you could probably now argue that that decision has rendered most of the disguised remuneration legislation obsolete – although I doubt that there will be any rush to repeal it.”

Root 2 Tax Limited v HMRC (TC07502)

Loan linked to pension

Summary – A loan used to fund a business was an unauthorised payment from the taxpayer's SIPP that gave rise to an unauthorised payment charge.

Robert Rowland was born in 1963 and in February 2005 he started his own business. By early 2010, aged 47, he had no assets except for funds held in a pension scheme. He needed to raise money to invest in his business. Having been declined by a bank, he approached his financial advisor and asked whether he could borrow money from his pension fund. The advisor informed him that this was not allowed.

Shortly after, he searched on the internet for pension loans and found IQ Business Services who said they were able to arrange loans against pension funds. He claimed that he was told that although personal pension scheme rules do not allow for such loans, if he moved his funds into a SIPP then G Loans Ltd would provide him with a personal loan against the tax free cash element of this fund. In February 2011, he set up the SIPP and transferred his entire pension fund totalling £172,000. The funds were used to buy shares with KJK Investments. Subsequently he received a personal loan from G Loans. In June 2015, KJK Investments and G Loans Ltd were wound up for misleading/misadvising their clients.

HMRC claimed that the loan advanced to Robert Rowland by G Loans Ltd was a payment made in connection with an investment using sums or assets held for the purposes of a registered pension scheme and that such a payment gave rise to an unauthorised payments charge and surcharge.

Robert Rowland claimed that he did not know that the investment made from his pension into KJK Investments was in any way connected with the personal loan received from G Loans Ltd. He did not know that KJK Investments were providing any funds to G Loans Ltd. Robert Rowland appealed arguing that the loan advanced by G Loans Ltd was a commercial loan used for investing in his business.

Decision

The Tribunal concluded that the investment in the KJK shares was inextricably linked to the loan made to Robert Rowland by G Loans Ltd. Had the monies not been invested in KJK, no loan would have been advanced.

The Tribunal stated that whether or not the payment was made in connection with an investment made using pension funds was a matter for objective determination and was not dependent on the state of knowledge of the relevant taxpayer. However, for the avoidance of doubt, Robert Rowland did know of the casual link between the investment in KJK and the loan; he knew that if he did not authorise the investment in KJK, no loan would be advanced to him by G Loans and that if the investment in KJK was not maintained, the loan from G Loans was immediately repayable.

He had borrowed £91,578.95 and this was more than 25% of his pension funds. The Tribunal found that the payment from G Loans Ltd was an unauthorised payment which gave rise to an unauthorised payments charge that was correctly calculated by HMRC.

The appeal was dismissed.

Robert Rowland v HMRC (TC07499)

IR35 review

The Government is launching a review of changes to off-payroll working rules to address any concerns from businesses and affected individuals about how they will be implemented.

The review will determine if any further steps can be taken to ensure the smooth and successful implementation of the reforms, which are due to come into force in April 2020. As part of this, the review will also assess whether any additional support is needed to ensure that the self-employed, who are not in scope of the rules, are not impacted.

The review, which will conclude by mid-February, will engage with affected individuals and businesses on their experiences of the implementation of these reforms.

As part of the review, the Government will hold a series of roundtables with stakeholders representative of those affected by the reform, including contractor groups and medium and large-sized businesses, to understand how the government can ensure smooth implementation of the reforms. The Government will also carry out further internal analysis, including evaluation of the enhanced Check employment status for tax (CEST) tool and public sector bodies' experience of implementing the reform to the off-payroll working rules in 2017.

In parallel to the review, HMRC will continue its comprehensive programme of education and support activities, proactively helping customers to prepare for the reform to off-payroll working rules in April 2020. This will include one-to-one engagement, webinars and workshops alongside targeted communications and support for customers, and their representatives to help them prepare for implementation on 6 April 2020.

www.gov.uk/government/news/off-payroll-review-launched

Updated loan charge guidance

As we know, following the publication of Sir Amyas Morse's loan charge review, the government announced it will make changes to the loan charge legislation. HMRC has now published guidance setting out the key changes and draft legislation was published on 20 January 2020.

The key changes to the loan charge are:

- the loan charge will apply to outstanding loans made on, or after, 9 December 2010;
- the loan charge will not apply to outstanding loans made in any tax years before 6 April 2016 where the avoidance scheme use was disclosed to HMRC and HMRC did not take action (for example, opening an enquiry);
- people can now elect to spread the amount of their outstanding loan balance (as at 5 April 2019, recalculated in line with the above changes) evenly across 3 tax years: 2018 to 2019, 2019 to 2020 and 2020 to 2021. This will give greater flexibility on when the outstanding loan balance is subject to tax and may mean that the loan balance is not subject to higher rates of tax;

- HMRC will refund voluntary payments (known as ‘voluntary restitution’) already made in order to prevent the loan charge arising and included in a settlement agreement reached since March 2016 (when the loan charge was announced) for any tax years where:
 - the loan charge no longer applies (loans made before 9 December 2010)
 - loans were made before 6 April 2016, the avoidance scheme use was disclosed to HMRC and the department did not take action (for example, opening an enquiry)

HMRC will not be able to process any refunds until changes to the loan charge legislation have been enacted by Parliament.

The package also includes a number of changes that will give individuals additional flexibility over the way they pay:

- if they do not have disposable assets and earn less than £50,000, HMRC will agree time to pay arrangements for a minimum of 5 years; for those earning less than £30,000, this can be extended to a minimum of 7 years. Those earning more than £50,000, or needing longer to pay, will need to provide HMRC with detailed financial information. There is no maximum time limit for a time to pay arrangement
- in line with existing practice, those needing time to pay, will pay no more than 50% of their disposable income, unless they have a very high level of disposable income. The amount paid into an arrangement each month will depend on their own individual circumstances.

www.gov.uk/government/publications/disguised-remuneration-independent-loan-charge-review/guidance

Loss on unbuilt villas

Summary - Capital loss in respect of contractual rights over two Barbados villas represented allowable losses even though the villas were not built.

Lady Lloyd-Webber & Lord Lloyd Webber are, and were at all material times, resident and domiciled in the UK. The couple had holidayed in Barbados for many years with family and friends. Having previously rented, they wanted to buy property on the island as a holiday home but had been unable to find anything suitable. In 2007, they learned of a development at Clearwater Bay. The couple selected two plots of land, Lot 7, to become a beach front villa, and plot 15, that was situated directly behind Lot 7 which was intended to be used by the nannies and children to enable the entire family to be accommodated and holiday together.

The couple entered into a contract with a developer and made payments in stages as construction progressed. After paying a total of just over \$11 million, it became clear that the developer was in trouble, that the contracts would not be fulfilled, and that the villas would never be built

Lady Lloyd-Webber & Lord Lloyd Webber claimed the capital loss on their 2011/12 tax returns of just over £3m each.

HMRC disallowed the losses and the Lloyd Webbers appealed.

Decision

It was not disputed that the couple had suffered a commercial loss in that they had spent considerable sums and it seemed unlikely that the villas would in fact be built. The issue between the parties was whether the amounts paid under the 2007 Contracts were paid to acquire/enhance their contractual rights and so were allowable as a deduction under s 38. HMRC argued that the payments were for the acquisition of land (in due course) and not for the purpose of acquiring the contractual rights as distinct assets.

The Tribunal concluded that the couple entered into the 2007 Contracts with the intention of ultimately acquiring completed villas. The payments made under the 2007 Contracts were for the acquisition of contractual rights, the only asset they actually acquired. This contractual right remained unfulfilled and therefore resulted in a real loss. Had Parliament considered that such a loss should be excluded from relief, it could have put that in the legislation, as it did in the case of losses resulting from a forfeited deposit. Such provision had not been made.

The appeal was allowed.

(The Tribunal confirmed that under s43 TCGA 1992, if and when the project had been completed, the amounts paid under the contractual rights would have been expenditure on the land, as, in such circumstances there would have been “change in nature” of the contractual rights).

Lady Lloyd-Webber & Lord Lloyd Webber v HMRC (TC07488)

Will created an interest in possession (Lecture P1176 – 14.56 minutes)

Summary – A mother’s will conferred a life interest in her share of the family home, making it settled property within her brother’s estate on his death.

Margaret Vincent’s parents, Mary and Derek Hadden, together with Mary Hadden’s brother, Ian Thom, decided to sell their respective homes and buy a house together. On 30 August 2015 they bought “Hopefield” in Somerset for £125,000. On completion of conversion works, they agreed an informal allocation of rooms for joint use and rooms for private occupation.

The brother contributed a larger proportion of the purchase price of the property and so it was agreed in a declaration of trust, that he owned 5/8th of the property as tenants in common with Margaret Vincent’s parents who owned the remaining 3/8th as joint tenants.

Her parents executed mirror wills, whereby their share in the property would pass to Mary Vincent on the second death, but with the brother being allowed to continue living in the property, rent free for as long as he wished. During this time he would be responsible for the day-to-day running costs including water rates, insurance and maintenance repairs of an income nature. On his death, the brother’s will left his 5/8 share in the property to Margaret Vincent absolutely.

Following her father's death, his share of the property passed by survivorship to her mother. When she died later the same year, Margaret Vincent was registered as the owner $\frac{3}{8}$ of the property. From this date, she owned $\frac{3}{8}$ th of the property as tenant in common with her uncle. As agreed, the brother continued to live at the property.

Following the uncle's death, HMRC issued a determination assessing his estate to IHT on the whole value of the property, arguing that he had had an interest in possession in the remaining $\frac{3}{8}$ of the property.

Margaret Vincent appealed arguing that her parents had only sought to permit her uncle to continue to reside at the property if they should pre-decease him and had never intended to confer an interest in possession.

Decision

The First Tier Tribunal concluded that Ian Thom held his $\frac{5}{8}$ th of the property as tenants in common with Margaret Vincent.

Her mother's will protected the uncle against a potential forced sale and but also gave him the right to occupy and enjoy the whole property. He paid all of the income expenses relating to the property, not just a $\frac{5}{8}$ th share. The Tribunal stated that this showed his knowledge and acceptance of Mrs Hadden's will.

The Tribunal found that, an interest in possession had been created and so IHT applied to the full value of the home.

Margaret Vincent had argued for a 10% discount against the valuation as HMRC's website guidance created a legitimate expectation that such a discount would apply when it states "For property or land shared with others... You can then take 10% off the share of the person who died." However, the First Tier Tribunal concluded that it had no jurisdiction to consider a claim of judicial review on the grounds of legitimate expectation or to rectify a will.

Margaret Vincent v HMRC (TC07432)