

Business tax update

Basis period reform and averaging

Following their engagement with HMRC, ATT has released a technical article that looks at how the basis period reform will interact with the averaging rules for farmers and creative artists. This includes two worked examples which are reproduced below.

Example 1 – profits in standard and transition part

Farmer Giles, with a year-end of 30 September, has been trading for some years and has overlap profits of £5,000. His profits are as follows:

- 30 September 2022 - £10,000
- 30 September 2023 - £20,000
- 30 September 2024 - £40,000
- 30 September 2025 - £15,000

2022/23

In 2022/23 he will be taxed on the profits for the year ended 30 September 2022 - £10,000. For the purposes of this example, we assume he does not opt to average with the previous year.

2023/24

This is the transition year and without basis period reform, he would have been taxed on profits in the year ended 30 September 2023 - £20,000. However, under the new rules, he will be assessed on the profits of the standard part (defined by the current year basis) plus his transition profit (profits of the transition part after overlap relief and spreading).

Taxable profits for 2023/24 before averaging will therefore be:

Year ended 30 September 2023 (Standard part under CYB)	20,000
Plus: Transition profit:	
Six months* of y/e 30 September 2024	20,000
Less: Overlap relief	<u>(5,000)</u>
	<u>15,000</u>
Spread over maximum 5 years = (£15,000/5)	<u>3,000</u>
Total taxable profits	<u>23,000</u>

(* Note that the legislation requires apportionment on a day basis, but we have used months for simplicity in this example.)

For the purposes of averaging, any transition profit brought into account (i.e., the £3,000 this year) is ignored. Only the standard part of £20,000 is considered.

Averaging is permitted, as £10,000 (2022/23) is less than 75% of £20,000 (2023/24 CYB).

The profits for 2022/23 will be reassessed as if he had taxable profits of £15,000 (being the £10,000 for 2022/23 and the £20,000 standard part profit from 2023/24 added together and divided by two).

The assessable profits of 2023/24 will be £15,000 plus the transition profit of £3,000, making £18,000 in total.

2024/25

We are now in the new rules, so Farmer Giles' profits are calculated by apportionment (again we are using months for simplicity, a proper calculation would use days):

Six months of year ended 30 September 2024 ($6/12 \times 40,000$)	20,000
Six months of year ended 30 September 2025 ($6/12 \times 15,000$)	<u>7,500</u>
Total	27,500
Plus spread element of the transition profits	<u>3,000</u>
Taxable profits (pre averaging)	<u>30,500</u>

For the purposes of averaging, we again ignore any transition profits. We are therefore required to compare the £27,500 above with the 2023/24 figure of £15,000 (being the assessable profits after averaging with 2022/23, ignoring transition profits). As £15,000 is less than 75% of £27,500, averaging is permitted.

The profits for 2023/24 will be reassessed as:

Average of 2023/24 and 2024/25, ignoring transition profits (calculated as $15,000 + 27,500$)/2	21,250
Plus spread element of transition profits	<u>3,000</u>
Total taxable profits	<u>24,250</u>

The assessable profits for 2024/25 will also be £24,250 (i.e., the average of £21,250 plus the £3,000 of spread transition profits brought in).

Example 2 – profit in standard part, loss in transition part

Farmer Giles, with a year-ended 30 September, has been trading for some years and has overlap profits of £5,000. His profits and losses are as follows:

- 30 September 2022 - £21,000
- 30 September 2023 - £20,000
- 30 September 2024 – (£12,000) loss
- 30 September 2025 - £15,000

2022/23

In 2022/23 he will be taxed on the profits for the year ended 30 September 2022 - £21,000. For the purposes of this example, we assume he does not opt to average with the previous year.

2023/24

In 2023/24, which is the transition year, without basis period reform he would have been taxed on profits in the year ended 30 September 2023 - £20,000. Under the new rules however, in 2023/24 he will be assessed on the profits of the standard part (defined by the current year basis) plus his transition profit (profits of the transition part after overlap relief and spreading)

Taxable profits for 2023/24 before averaging will therefore be:

Year ended 30 September 2023 (Standard part under CYB)	20,000
Plus (minus) transition profit / (loss):	
Six months of year ended 30 September 2024*	(6,000)
Plus: Overlap relief	<u>(5,000)</u>
	<u>(11,000)</u>
Total taxable profits	<u>9,000</u>

(* Note that the legislation requires apportionment on a day basis, but we have used months for simplicity in this example.)

Spreading is not available as there is a loss in the transition part. The taxable profits for the period before averaging are therefore £9,000.

As only transition profits (and not losses) are ignored for the purposes of averaging, we need to compare this £9,000 with the £21,000 in the prior year, 2022/23. Averaging is permitted, as £9,000 is less than 75% of £21,000

The profits for 2022/23 will be reassessed as if he had taxable profits of £15,000 (being the £9,000 for 2023/24 plus the £21,000 for 2022/23, divided by two) and the assessable profits of 2023/24 will also be £15,000.

2024/25

We are now in the new rules, so Farmer Giles' profits are calculated by apportionment (again we are using months for simplicity, a proper calculation would use days):

Six months of the year ended 30 September 2024 ($6/12 \times (12,000)$)	(6,000)
Six months of the year ended 30 September 202 ($6/12 \times 15,000$)	<u>7,500</u>
Taxable profits (pre averaging)	<u>1,500</u>

As £1,500 is less than 75% of £15,000, averaging is permitted.

The profits for 2023/24 will be reassessed as £8,250 (being £15,000 plus £1,500, divided by 2) and the profits for 2024/25 will also be £8,250.

<https://www.att.org.uk/basis-period-reform-averaging>

Transfer of a business and goodwill

Summary – On 1 December 2014 there was a de facto transfer of the business (including the goodwill) from the partnership to the company; goodwill could be amortised, and income generated from that date belonged to the company.

Prior to December 2014 Ameeka Patel and Rajiv Ruwala were partners in a dental practice business run from premises at 2 Green Walk, Dartford.

In 2014, the partners decided to incorporate and set up a company 2 Green Smile Limited for that purpose. Minutes from a Board meeting held in November 2014 confirmed that the partners had orally agreed to transfer the business, including the business premises, the NHS and private patient contracts together with the goodwill with effect from 1 December 2014.

The following February, staff were given P45s and informed that going forward they were employed by the company. Then later that year, in October, the company registered with the Care Quality Commission with the NHS contracts novated from the partnership to the company.

With the transfer having taken place before 3 December 2014, the company amortised the purchased goodwill in full in its accounts,

HMRC later challenged this, arguing that the business was not transferred at that time. HMRC argued that the goodwill was transferred when the NHS contracts were novated on 23 October 2015. Since 8 July 2015, amortisation of purchased goodwill has not been deductible and so HMRC denied the deduction in the accounts. Further, HMRC sought to assess the partners on the business income up to 23 October 2015, rather than the company.

The company and the partners appealed to the First Tier Tribunal.

Decision

The First Tier Tribunal found that the business was not transferred at the time of the oral agreement that had been minuted. This agreement was unenforceable, as agreements including the transfer of land must be in writing.

However, the Tribunal found that case law supported the fact that an intention to transfer a business that later becomes reality can effect a de facto transfer. Consequently, the First Tier Tribunal found that although the oral agreement was ineffective, the evidence supplied by the taxpayers was enough to confirm that there was a de facto transfer on 1 December 2014, with legal formalities completed at a later date.

The appeals were allowed.

*2 Green Smile Limited and Dr Ameeka Patel (As Nominated Partner of
2 Green Dental Partnership) v HMRC (TC8677)*

Profit dispute out of time

Summary – A referral of a profit allocation dispute between a partner and partnership was invalid as it was out of time.

From July 2016, Jason Anderson was a partner in PricewaterhouseCoopers LLP (PwC). After being served with a compulsory retirement notice, he retired from firm in November 2018.

He claimed PwC had unlawfully discriminated against him in requiring him to retire and received a settlement claim, consisting of

1. balance of profit share for the period 1 July 2018 to 30 November 2018; and
2. an amount described as 'an additional payment of an amount equal to 12 months' profit share' (the additional payment).

PwC filed its 2018/2019 partnership return on 26 October 2020. Both elements of the settlement payment to Jason Anderson were included in that statement as profit share allocated to him. Jason Anderson became aware of this after receiving an email of 5 January 2021 from PwC.

On 10 December 2021, Jason Anderson made a referral to the First Tier Tribunal under s.12ABZB(3) TMA 1970. He contended that the additional payment element was compensation in settlement of his claim and should not have been allocated to him as profit share in the partnership return.

Decision

The First Tier Tribunal found that Jason Anderson 's referral was made out of time and that it did not have the power to admit the referral out of time. The 12-month referral time limit in s.12ABZB(5) ran from the date the partnership delivered the partnership return to HMRC, not from the date the return is delivered to the individual partner making the referral. The First Tier Tribunal decided it did not have the power, under the Tax Chamber Procedure Rules, to admit the referral out of time because to do so would conflict with the time limit laid down in TMA 1970.

Further, the First Tier Tribunal found that it was precluded from admitting the referral by s.12ABZB(4) because the dispute was directly or indirectly, in substance, about the amount (before sharing) of the partnership's profits; it was at least indirectly so because, if the additional payment was a payment of compensation, it would have been deductible in computing PwC's overall profit.

Jason Anderson v PricewaterhouseCoopers (HMRC, third party)(TC08662)

Adapted from the case summary on Tax Journal 13 January 2023

R&C Brief 1: Option to tax notification

Any options to tax notified to HMRC before 1 February 2023 will still receive a standard option to tax notification receipt.

However, from 1 February 2023, HMRC will no longer issue receipt letters in response to notifications. Going forward, an acknowledgement or receipt of an option to tax will only be provided when the notification is sent by email.

Taxpayers should:

- send an option to tax notification by email to: optiontotaxnationalunit@hmrc.gov.uk
- include the following in the subject line of the email:
 - property address, including postcode
 - effective date of the option to tax notification

The automatically generated e-mail response will have the date when the notification was received by HMRC and will constitute evidence of the notification date. This should be kept as evidence of the notification.

HMRC will cease processing requests for confirmation of existing options to tax, except where the effective date of the option is likely to be over six years ago or the request is made by an appointed Land and Property Act receiver or insolvency practitioner.

<https://www.gov.uk/government/publications/revenue-and-customs-brief-1-2023-changes-in-processing-option-to-tax-forms-by-the-option-to-tax-national-unit>

Medical supplies

Summary – The supply of medical staff by an umbrella company was a standard-rated supply of staff and was not an exempt supply of medical services.

Mainpay Ltd employed, or treated as employed, consultants and GP specialists, taxing them through PAYE, with their payroll outsourced to another company.

The company supplied their medical staff to an intermediary agency company, who in turn had separate contracts for their supply to NHS Trusts. It was the NHS Trust and agency company who determined which consultants would fulfil assignments and what they would be paid. If the consultant was agreeable to the terms of an assignment, the agency would then inform Mainpay Limited.

Mainpay Limited treated the supplies as exempt medical care (Group 7 Schedule 9 VATA 1994), arguing that they were providing medical care, not staff.

HMRC disagreed and raised assessments on the basis that the company was making standard-rated supplies of staff. The disputed VAT in this case was £165,000 relating to supplies made between 1 November 2010 to 31 January 2014.

Both the First Tier and Upper Tribunal found that the only contact Mainpay Limited had with the consultant was in relation to payroll matters. There was no contact between the consultant and Mainpay Limited in relation to medical matters. The company played no part in deciding who worked where or what their rate of pay was and had no relationship with the patients to whom medical care was provided. The company did not arrange professional indemnity insurance either for itself or for its consultants. It was not supplying medical care.

The Upper Tribunal granted Mainpay Limited permission to appeal to the Court of Appeal.

Decision

The Court of Appeal confirmed that the decision reached by both the First Tier and Upper Tribunal was correct.

The term 'medical care' required the services supplied to include diagnosis, treatment or cure of disease or ill-health. The services supplied by Mainpay Limited provided none of these. The company possessed no medical expertise, exercised no degree of control over the consultants' decision-making. The company simply provided staff to the agency.

The appeal was dismissed.

Council provided off-street parking

Summary - Overpayments at a council's pay and display car parks were found to be consideration for VAT purposes.

This case concerns the VAT treatment of off-street parking provided by the Borough Council of King's Lynn and West Norfolk, where the pay and display parking machines used to collect payments from customers did not provide change.

The issue was whether when, for example, a customer inserted a £1 coin and 50p piece to pay for an hour's parking costing £1.40 whether the 10p overpayment represented consideration paid for the supply of car parking making it liable to VAT.

In 2012, the Borough Council of King's Lynn and West Norfolk had previously appealed a similar case (Borough Council of King's Lynn and West Norfolk v HMRC [2012] UKFTT 671 (TC) with the First Tier Tribunal finding that an overpayment was not part of the consideration for a supply made by a local authority. This decision was not challenged by HMRC.

Subsequently, the Court of Appeal reached a decision in National Car Parks Limited v HMRC [2019] EWCA Civ 854, finding that an overpayment was part of the consideration for a supply of off-street parking by a private sector provider. The Court of Appeal did not hear any argument regarding the provision of such supplies by a local authority and declined to take a view on the correctness of the earlier First Tier Tribunal case.

As a result, the issue in this case was essentially whether the Court of Appeal's case applied equally to the provision of car parking services by local authorities. If so, the earlier First Tier Tribunal case involving the Borough Council of King's Lynn and West Norfolk was wrong.

The Borough Council of King's Lynn and West Norfolk argued it could only charge for parking by exercising its powers within the statutory framework by charging a set fee. With no direct link with the supply, any overpayment was a voluntary non-taxable contribution to the Council.

Decision

The Upper Tribunal adopted the Court of Appeal's approach in National Car Parks Limited v HMRC [2019] EWCA Civ 854. The tariff board showing the hourly rates charged to park included a statement that overpayments were accepted and that no change was given. The Tribunal concluded that this was effectively an offer to provide parking in exchange for coins of not less £1.40. The statutory provisions governing the council's car parking did not prohibit overpayments. Where a customer chose to insert £1.50, this was the total consideration given by the customer for the supply and so the taxable amount for VAT purposes.

The Borough Council of King's Lynn and West Norfolk v HMRC [2022] UKUT 00326 (TCC)