

Personal tax round up (Lecture P1171 – 19.24 minutes)

IR35 – IT consultant win

Summary - The hypothetical contracts satisfied the Ready Mixed Concrete tests, resulting in HMRC losing the case.

Mr Alcock worked as an employee for Accenture from September 1998 until March 2008 when, having failed to gain promotion, he left to provide his services via RALC Consulting Limited, his personal services company. DWP had been a client of Accenture and Mr Alcock had worked on DWP engagements whilst at Accenture.

Between 6 April 2010 and 5 April 2015, RALC Consulting Limited contracted with Accenture and the DWP (the “end clients”) through two agencies to provide Mr Alcock’s services. While working on these engagements he undertook work for other organisations, although this was less than 10% of his total revenue.

HMRC claimed that the arrangements fell foul of the IR35 rules and issued determinations to collect income tax and NICs payable of £164,482 and £78,842 respectively.

RALC Consulting Limited appealed, arguing that the Intermediaries legislation did not apply because the hypothetical contracts with the end clients would have been contracts for services and Mr Alcock would have been self-employed.

Decision

The First Tier Tribunal concluded that there was insufficient mutuality of obligation between Mr Alcock and the end clients in the notional contracts to establish an employment relationship. There was no obligation within the contracts for Accenture or DWP to provide Mr Alcock with any minimum amount of work. Further, there was no obligation within the contracts for him to work on any given day or to make himself available for a minimum amount of work. The contracts were time limited with no obligation for them to be renewed on their conclusion. Mr Alcock’s contract could be terminated on the spot if there was no work, with no guarantee of any further days even within the contract period and there was no contractual right for Mr Alcock to claim against his clients.

Under the contracts there was a right of substitution, but this was never exercised because Mr Alcock personally performed each contract. It was a fettered right subject to the approval of his clients. They had chosen him personally to provide the services. The only example of another person being considered was not to replace Mr Alcock but to assist in delivery of the project. The Tribunal concluded that this would have pointed towards the contracts being contracts of employment.

The Tribunal was satisfied that Mr Alcock had substantial control. He had reasonable autonomy when determining what and how to carry out his work. Although Accenture and DWP determined when and where he worked, this was required due to the nature and deadlines of the tasks to be completed and the quality of the service to be provided for the end clients.

Mr Alcock had a contractual right to work for other clients, and he exercised this right to a limited extent. However, this proved to be a neutral factor for the Tribunal due to his economic dependency on the contracts in question.

Mr Alcock was held to be operating in business on his own account with his own leased premises, website, email and professional indemnity insurance. He was not involved in any management, pastoral care, HR, training nor disciplinary responsibilities or obligations at either Accenture or DWP.

So, applying the three stages of the *Ready Mixed Concrete* case, including “painting the picture” and taking into account that Mr Alcock was in “business on own account”, the Tribunal was satisfied that the hypothetical contracts with his end clients would be ones for services and therefore not caught by the IR35 legislation.

The appeal was allowed.

RALC Consulting Limited v HMRC

Unauthorised payment charge

Summary - HMRC's documentary evidence was insufficient to demonstrate a connection between the specific pension fund and the loan and the appeal was allowed;

Elizabeth Hughes wanted to consolidate three pension pots and sought advice from Mr Steve Cannon who had set up the occupational scheme at Moorcroft Pottery where she worked. At the time, she was not looking to release pension funds from her scheme before the age of 55 but was looking for some financial support whilst undertaking the third year of doctoral studies in urban regeneration at Staffordshire University.

On 26 October 2012, Fast Pensions wrote to Elizabeth Hughes to confirm that funds of just over £31,000 had been received into her new Plan (FP1), and that the Plan had started. At around the same time, she was offered and accepted a loan from another company, Blu Funding Corporation Limited and received £10,000 on 24 October 2012.

HMRC submitted that the loan to Elizabeth Hughes was an unauthorised payment under the FA 2004 and applied the relevant tax charges. They argued that the amount advanced to her of £10,000 was paid to her under one of two possible routes:

- Direct route: "the payment was a simple payment made to Miss Hughes via the bank accounts of FP1 and Blu Funding"; or
- Indirect route: "FP1 paid the money to Blu Funding Corporation Ltd as an investment, and Miss Hughes was paid out from the investment".

Elizabeth Hughes claimed that she was unaware that the loan was connected to her pension fund and appealed the charge.

Decision:

The Tribunal concluded that this was not a case, unlike some others, where a single payment could be readily and unequivocally identified moving to the pension fund, from the pension fund to the lender, and from the lender to the taxpayer. It appeared that Elizabeth Hughes' money moved as part of a larger sum making it difficult to identify exactly when the money was transferred.

From the evidence supplied, the Tribunal concluded that at best the loan was being made (24 October) before the Pension moneys had arrived (26 October). The Tribunal was not satisfied that the direct route applied and were not satisfied that Elizabeth Hughes received a payment from her pension scheme via a third party.

As for HMRC's second approach, the documentary evidence supplied was muddled and not clear-cut. The Tribunal stated that it was not their task to seek to unravel a documentary tangle that defeated even the Insolvency Service's investigators. (Interestingly, the Insolvency Service referred to the winding up of Fast Pensions Ltd and Blu Debt Management Ltd as "Rogue pension and finance companies closed down after abusing millions of pounds". The service had acknowledged that it had been impossible for Government investigators to determine the full extent of the companies' activities, the nature and value of the investments made, or the value of the members' pension funds).

Due to the inconsistent documents, the Tribunal could not be satisfied that the £10,000 loaned was connected to her pension fund under either the direct or the indirect route postulated by HMRC.

It was therefore not an unauthorised payment, and the charges could not stand. The appeal was allowed.

Elizabeth Hughes v HMRC (TC07417)

Earlier this year there was another case involving the same pension and loan companies (Gary West v HMRC -TC07385)

Gary West needed a loan as he was in financial difficulty due to his ill health. In August 2012, Blu Funding Corporation Limited offered him a loan for £11,650 and around the same time they asked him about his pension arrangements.

He believed the transfer of his pension to Fast Pensions to be a good idea because his current pension was not receiving any further contributions, it was not being managed and it was not growing. He was told the funds would be actively managed in the Fast Pensions scheme. His fund was transferred on 21 December 2012

Unlike in the Hughes case, there was a single credit identifiable on the bank statement showing the transfer from Gary West's pension to Blu Funding. The sum of £11,650 appeared on 25 January 2013 described as 'Transfer loan to Blu funding'. While in the Hughes case, it was not possible to trace the funds moving, in this case the matter was clear cut.

The First Tier Tribunal said the evidence proved 'on the balance of probabilities' that funds were moved from the FP1 account to Blu Funding and then to the taxpayer as a loan. The appeal was dismissed.

At the end of the Hughes case the Tribunal highlighted that there are some 520 people who were encouraged to transfer their pension savings from existing providers into schemes (including FP1) with Fast Pensions acting as the sponsoring employer. Only time will tell just how many of these will come before the Tribunal.

EIS relief denied

Summary - EIS relief did not apply to a new issue of shares as the new shares had an excluded preferential right to dividend.

Foojit Limited was incorporated on 22 January 2014 and provided hybrid mail solution services to businesses.

The company wanted to issue B shares in order to raise funds and to provide enhanced protection as compared to the existing A shares and shareholders

On 28 August 2014 Foojit Limited applied for advanced assurance in respect of the EIS. On 7 October 2014 HMRC confirmed that EIS authorisation would be provided if a satisfactory EIS 1 certificate was filed. This included certification that the shares complied with the requirements contained within ITA 2007.

On 18 November 2014 Foojit Limited amended its Articles of Association in order to facilitate the share issue following which 910 £1 B Shares were issued for a subscription of £400,000 and the company submitted form EIS 1 on 16 January 2015.

HMRC refused to grant authorisation on 30 January 2015 on the basis that the B Shares carried a preferential right to dividends as the B shares were entitled to 44% of the distributable profits in preference to the other shareholders.

The company appealed.

Decision

The First Tier Tribunal concluded that the B shares satisfied s173(2)(a) and (b) as they did not carry any preferential rights on a winding up or any rights of redemption.

The Tribunal found that the profit allocation did not disqualify the company from relief as the amount payable did not depend on a decision by the company, the shares did not carry a preferential right within s173(2A)(a). The right was fixed and could not be altered by a director or member

However, there is a second requirement within s173(2A)(a) that also needs to be satisfied. This states that the dates on which the dividends become payable is not dependent on a decision by the company, shareholder or any other person.

This was not satisfied as the Articles of Association did not provide that the dividends were payable on a certain date and suggested that payment in stages was possible and was dependent on the company making a decision or passing a resolution.

The Tribunal concluded that the date or dates on which the dividends were payable depended on a decision of the company, the holder of the share or any other person on the basis that once the audited accounts were completed, the distributable profits had to be identified and a declaration or resolution was required for the dividends to become payable. The B Shares carried a preferential right of the type which was excluded by s173(2A).

The appeal was dismissed.

Foojit Limited v HMRC (TC07467)

Entrepreneurs' relief for a partnership

Summary – The couple were in partnership but entrepreneurs' relief was denied as no trade ceased when the premises were sold.

Stephen Reneaux worked as a self-employed MOT tester and mechanic. His wife worked as a hairdresser but she was also employed by her husband's business to deal with the administration and accounts.

The couple acquired two business units. Between 1993 and 2003, Stephen Reneaux traded at the premises under the name Trucktest as an MOT tester and HGV vehicle mechanic.

In 2003, the Trucktest business was sold to a Mr Robertson, who leased the premises from that date until 2011 when his business failed. The premises were unoccupied for a short period.

The couple considered running the premises as an MOT centre and in May 2012 contacted the Vehicle and Operator Services Agency ("VOSA") to apply for appointment as an Authorised Examiner. However, this plan was shelved when Stephen Reneaux was approached by Chalvey Car Service, a dealer in classic cars, with a view to hiring out Unit 2 to provide secure storage for their stock of cars. Chalvey Car Service paid him £10,000 to store their cars at the Premises from 1 November 2012 until 31 March 2013.

Stephen Reneaux continued to work as a freelance MOT tester at customer locations. He occasionally made use of the workshops in Unit 1 to carry out vehicle maintenance work, as well as for the storage of some of his heavier tools, but he acknowledged that this was at most "a couple of times a month". Most of the tools of his trade were kept in a garage at his home address.

All the income from his work as a freelance MOT tester and vehicle mechanic was returned on his income tax returns for the period. None of this income was returned on the tax returns of his now, ex-wife.

All the income from the letting of the storage facility in Unit 2 and the workspace hire facility in Unit 1 was split 50/50 between them and reported on their respective tax returns as rental rather than trading income.

On 9 May 2013 the units were sold for £600,000 to the owner of Chalvey Car Service. They both reported gains on their tax returns and claimed entrepreneurs' relief, which HMRC denied.

Decision

The First Tier Tribunal stated that there were two trades that they needed to consider:

1. Stephen Reneaux's trade as a freelance MOT tester and vehicle mechanic;
2. The couple's provision of storage facilities and workshop hire at the premises.

The Tribunal concluded that Stephen Reneaux's trade as a freelance MOT tester and vehicle mechanic did not cease when the premises were sold. The condition in s169I TCGA 1992 that requires the premises to be used at the time that a business ceased to be carried on, were clearly not met.

The Tribunal also concluded that the leasing of the storage space for cars was a single transaction that constituted the simple lease of property rather than trading activity. The workshop hire might have had the necessary frequency to be treated as a trade but the Tribunal did not hear any evidence that this was a substantial activity. Without a business, the premises could not have been in use for the purposes of a business at the time the business ceased to be carried on and so entrepreneurs' relief was denied.

Clearly it was not necessary to consider whether the taxpayer and his former wife were carrying on a business in partnership. However, the Tribunal did look at this point.

Even though they were divorced they agreed on a joint course of action, which was designed to realise income from the Premises. S1(1) Partnership Act 1890 says a "Partnership is the relation which subsists between persons carrying on a business in common with a view of profit." On this basis, the Tribunal concluded that the couple were in partnership despite there being no partnership agreement and income being declared to HMRC on an individual rather than partnership basis.

Stephen Reneaux & Lynne Reneaux-Smith V HMRC (TC07441)

No PPR for flat

Summary – Lack of reliable evidence to show that the taxpayer had ever lived in a property meant that Principal Private Residence (PPR) relief did not apply on the sale of a flat

On 18 December 2001 and following her divorce, Cornelia Simpson bought Coleherne Court for £825,000 and moved into the flat with her daughter. She claimed that when her daughter married in 2013 this property was to become her daughter's marital home and so she looked to buy a smaller flat in the same area of London. In June 2013, she bought a flat in Earl's Court Square that she claimed she had moved into it on her return from her daughter's wedding that summer. She argued that having bought the flat that she had furnished it, moved in and had lived in it while the refurbishments were being undertaken as her main residence.

Later that year in November 2013, she sold the flat, having undertaken the substantial improvements at the property and claimed PPR relief that HMRC denied.

Decision

Interestingly, the daughter and her French husband never moved to London, choosing to live in Paris where he worked. The First Tier Tribunal stated that they were not satisfied that the daughter and new husband ever intended to move to London.

Throughout, all correspondence had continued to be addressed to Cornelia Simpson at her Coleherne Court address and she had continued to claim the 25% single person council tax discount in relation to that property.

As for the new flat, it had been sparsely furnished and no contents insurance had been taken out. Utility suppliers confirmed that they had had no contact with Cornelia Simpson and so the Tribunal concluded that she did not tell them that she was the new occupant of Earl's Court Square.

The Tribunal found that the flat was never occupied as a residence and PPR relief was denied.

The appeal was dismissed.

Cornelia Simpson v HMRC (TC07476)

Farming business eligible for APR and BPR

Summary – The deceased occupied the house and other buildings at Woodlands Farm for agricultural purposes for two years up to his death and the business carried on by him did not consist “wholly or mainly of...making or holding investments”.

Thomas Gill lived at Woodlands Farm in Lancashire and on death, he owned the freehold to 11 properties which broadly included the house where he lived; a yard, brick barn and other outbuildings and 21.19 acres of bare agricultural land (permanent pasture).

During the relevant period Mr Gill did not own any livestock. He allowed farmers to graze their livestock on his agricultural land under annual grazing licences. HMRC allowed the executors' claim for APR on the land on the basis that the land was agricultural property at the date of Mr Gill's death and that he had the right to obtain vacant possession within 12 months as the grazing licences had less than 1 year left to run,

On 1 November 2017 HMRC issued a Notice of Determination refusing the claim for:

- APR in respect of the value of the house, the brick barn and all other outbuildings at Woodlands Farm; and
- BPR in its entirety.

The APR claim in respect of the buildings was refused on the basis that the house was not a “farmhouse” and thus did not constitute “agricultural property” and neither the house nor the other buildings were occupied by Mr Gill “for the purposes of agriculture” throughout the period of two years ending with Mr Gill's death.

The BPR was refused on the basis that the business carried on was not “relevant business property” as it consisted of “wholly or mainly of...making or holding investments” (i.e. the land owned by Mr Gill).

The taxpayers appealed, arguing that the land, farmhouse and buildings were agricultural property as they were occupied by Mr Gill for agriculture purposes for the relevant period. It was wrong to break down the farm into various discrete elements and that HMRC should consider the claim based on the overall nature of the farm. They argued that under the licences, Mr Gill retained possession, overall control and occupation of the land.

Although not his livestock, Mr Gill would move the animals depending on the state of the land through the seasons; some of the fields were best for grazing, others had shelter for the animals and there was a shed in the yard in which the animals could be penned. He maintained the hedges, fencing, ditches, drains, control of weeds, topping, harrowing, rolling and preventing 'poaching' by animals; his vehicles and equipment, stored in the outbuildings, were used for and in connection with working the land; he received the Single Farm Payment from the Rural Payments Agency payable to farmers.

Decision

There was no dispute that Mr Gill occupied the house until his death or that the house was "of a character appropriate to the property". But was his property used "for the purposes of agriculture"?

The Tribunal stated that the activities carried out by Mr Gill were those of a farmer, working an active farm. In their view his significant maintenance and keeping the land in good order were part and parcel of running a working farm. The outbuildings were used as farm buildings, for storing equipment used for agricultural activities. He ran a farming business and occupied the main farmhouse on a farm where he was an active farmer.

The Tribunal concluded that these activities were not carried out to obtain income and could not be regarded as a business of holding investments; the farming work was done to maintain the business of an active working farm.

The Tribunal were satisfied that Mr Gill's occupation had always been as a farmer and although the manner in which he farmed was modified with time and age, he did not cease to be a farmer, his activities did not cease to be "for the purposes of agriculture" nor did they become those of an investor.

The appeal was allowed.

Charnley & Hodgkinson as Executors for Thomas Gill (Deceased) v HMRC (TC07425)

Loan charge U turn

The 2019 disguised remuneration Loan Charge was introduced to tackle contrived schemes where a person's income is paid as a loan that does not have to be repaid. The government is clear that disguised remuneration schemes do not work and that their use is unfair to the 99.8 per cent of taxpayers who do not use them.

However, in its present form, the Charge seeks to retrospectively tax a significant number of freelance workers for employment arrangements used over the last twenty years and affects many thousands of workers across all sectors.

There were serious concerns that the tax bills being issued were causing widespread distress and that the rules should not be applied retrospectively. Consequently, in September 2019, it was announced that Sir Amyas Morse, the former Comptroller and Auditor General and Chief Executive of the National Audit Office (NAO), would lead an independent review of the Loan Charge to consider whether the policy is an appropriate way of dealing with disguised remuneration loan schemes.

In his review, Sir Amyas concluded that:

“...the loan charge should not apply to loans entered into by either individuals or employers before December 9 2010, being the point at which the law became clear.”

Following this review, HMRC has now announced that:

- the charge will now only apply to loans taken out from 9 December 2010 (rather than 1999). This was the date that the rules were announced;
- loans taken out between 2010 and 2016 and declared will be exempted; (This seems somewhat unfair on those who were advised not to disclose or that they did not need to disclose).
- taxpayers can defer filing their returns and paying their liability until September 2020 and they will be able to split the balance over three tax years;
- taxpayers earning less than £50,000 and without disposable asset, can agree Time to Pay arrangements for a minimum of 5 years, extended to 7 years for those earning less than £30,000, we will agree a minimum of 7 years. Those 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.

The Government is expected to introduce legislation to implement the changes early next year. Once this has happened, HMRC will refund qualifying voluntary payments already made to prevent the loan charge applying.

<https://www.gov.uk/government/publications/disguised-remuneration-independent-loan-charge-review/guidance>