

Personal tax update

(Lecture P1201 – 22.54 minutes)

Returning office equipment

As a result of working from home during the coronavirus, employers will have provided office equipment for their employees or, alternatively, may have reimbursed employees for the cost of items that they bought themselves. In anticipation that employees will be returning to work, HMRC has issued guidance as to how such equipment will be treated going forward.

Equipment provided by employer

Where employees were provided with office equipment to work from home, there is no tax charge provided that the equipment is returned. However, if ownership of the equipment is transferred to the employee, at any time, this will become an employee benefit. The charge will be on the market value of the equipment at the time of the transfer, minus any amount the employee may have paid towards the equipment.

Equipment reimbursed by employer

Any reimbursed home office equipment is owned by the employee. There will no benefit charge on the reimbursement or if the employee keeps the equipment as it is something that they already own.

https://www.gov.uk/guidance/check-which-expenses-are-taxable-if-your-employee-works-from-home-due-to-coronavirus-covid-19?utm_source=055d7327-38c3-4c2f-ac9d-b7c1657c05fe&utm_medium=email&utm_campaign=govuk-notifications&utm_content=daily#history

Employer Related Securities and COVID-19

Employment Related Securities Bulletin 35 (June 2020) includes new guidance on a number of COVID-19 related matters.

Save As You Earn (SAYE)

Where employees are saving under a SAYE scheme and are unable to contribute because they are furloughed or on unpaid leave during the coronavirus pandemic, HMRC will extend the payment holiday terms.

All employees with a savings contract in place on 10 June 2020 can delay the payment of monthly contributions, beyond standard 12 months, where those additional months are due to coronavirus.

Any temporary postponement of contributions will put back the 3 or 5 year maturity date by the total number of months missed, including any additional months missed as a result of the impact of coronavirus.

Payments of Coronavirus Job Retention Scheme (CJRS) to employees furloughed during the coronavirus pandemic can constitute a salary and SAYE contributions can continue to be deducted from CJRS payments.

Share Incentive Plan (SIP)

Payments of CJRS to furloughed employees can constitute a salary and SIP contributions can continue to be deducted from CJRS payments.

SIP participants are already permitted to stop their deductions from their salary but participants will not be allowed to make up missed deductions if they stop due to coronavirus.

Company Share Option Plans (CSOP)

HMRC accepts that where employees and full-time directors, now furloughed because of coronavirus, have been granted options before coronavirus, those options will remain qualifying on the basis they were full time directors and qualifying employees at the time of grant.

EMI valuations

When EMI options are ready to be granted employers can agree an appropriate valuation with HMRC and in such such circumstances, the options currently need to be granted within 90 days.

Provided that there has been no change that may affect an appropriate value then any:

- EMI valuation agreement letters already issued, where the 90 days expires on or after the 1 March 2020, can be automatically treated as being extended by a period of 30 days;
- new EMI valuation agreement letter issued on or after 1 March 2020 will be valid for 120 days.

Scheme registrations and returns

HMRC recognises that some employers and agents may struggle to meet ERS tax obligations due to coronavirus.

Employers should try to meet their obligations such as registering new schemes and filing returns as soon as you can. However if they cannot and this is due to coronavirus, HMRC will consider coronavirus as a reasonable excuse for missing some tax obligations. Employers should explain how they were affected by coronavirus when they make their appeal.

Contacting HMRC

Due to the situation with coronavirus HMRC recommends that employers submit all enquiries by email.

If employers need to disclose sensitive information, and have concerns about sending this by email, they should send a short email:

- without any sensitive data;
- with details of how to be contacted.

<https://www.gov.uk/guidance/employment-related-securities-bulletin-35-june-2020>

Options as employment related securities

Summary – Options granted to a company’s advisor, at a time when they were director of the company, were employment-related securities under s471 of ITEPA 2003.

In 2006, as part of an exercise to raise equity funding for Vermilion Software Limited, Vermilion Holdings Limited was set up. The company was advised by specialist whose services were paid for by being granted an option (the “2006 Option”) in favour of his nominee company, Quest Advantage Limited.

However, by January 2007 Vermilion Holdings Limited was in financial difficulty and likely to go under. Further capital and changes in management leadership were required to rescue the company. Precondition of the rescue funding were that the:

- adviser would be appointed as chairman of the company and would work for the company for a 12 month period;
- 2006 Option would be cancelled or amended.

Rather than amending the option, the advisor chose to cancel the “2006 Option” and on 2 July 2007 Vermilion Holdings Limited and Quest Advantage Limited entered into an Option Agreement (the “2007 Option Agreement”) granting a new 2007 Option with no consideration payable for the grant of the Option.

In June 2016 Quest Advantage Limited novated the 2007 Option to the adviser who then exercised the 2007 Option in anticipation of the sale of the entire issued share capital of Vermilion Holdings Limited to a subsidiary of a major listed US corporation on 8 November 2016.

On 17 August 2017 HMRC sought to assess Vermilion Holdings Limited for income tax under PAYE and Class 1 National Insurance Contributions in relation to the 2007 Option exercised in 2016/17 for a sum totalling £386,000. This amount is not disputed but what was disputed was how the transaction should be treated for tax:

Vermillion Holdings Limited argued that the options were not employment related securities under s471 ITEPA 2003, income tax and NIC did not apply but rather any gain on the subsequent disposal of the shares would be charged to capital gains tax.

The First Tier Tribunal found in favour of Vermillion Holdings Limited. The “2007 Option” was simply as a replacement for the non-employment related “2006 Option”.

HMRC appealed to the Upper Tribunal.

Decision

The Upper Tribunal stated that there was more than one reason why the “2007 Option” was granted to the adviser:

1. Immediately prior to the rescue package, the existing “2006 Option” was worthless. The adviser had already lost the value he had earned through consultancy services;
2. The “ 2007 Option” was part of a package of measures that included the employment of the adviser. The grant of the “2007 Option” was conditional on the other conditions including the employment of the adviser being satisfied before it could go ahead.

The Upper Tribunal concluded that it was enough that one of the reasons was that of employment. Once the adviser became a director, the “2007 Option” was made available by reason of the adviser’s employment; s471(1) ITEPA 2003 applied. From 2007 onwards, the performance of Vermilion Holdings Limited and the value of the “2007 Option” both improved to such an extent that the gain on the exercise of the “2007 Option” in 2016 was in excess of £600,000

HMRC v Vermilion Holdings Limited [2020] UKUT 0162 (TCC)

Transfer of assets to SIPP

Summary – Tax relief on pension contributions is available on cash contributions but not transfers of other assets.

Four individuals were members of a self-invested personal pension scheme (SIPP) that was administered by Sippchoice Limited. The individuals completed Contribution Forms agreeing to make in-specie contributions intended to be treated as net contributions to the SIPP. This notification constituted an irrevocable and binding obligation to make the stated contribution. The individuals later confirmed that their contribution would be made in the form of shares.

HMRC sought to deny tax relief on the contributions arguing that s188(1) FA 2004 only gives relief for payments of money and not for transfers of assets, even if made in satisfaction of a money debt.

Sippchoice Limited argued that “contributions paid” includes the transfer of assets in satisfaction of a money debt and the four individuals each transferred their shares to the SIPP in satisfaction of such a debt. Sippchoice’s alternative contention was that transfers of non-cash assets are nevertheless “contributions paid” within s188(1) even if they are not in satisfaction of a money debt.

The First Tier Tribunal had found in favour of the individuals, agreeing that the share transfers were ‘contributions paid’ under the legislation, and allowed the tax relief. The Tribunal rejected HMRC’s submission that the normal meaning of “contribution paid” is confined to a payment of cash. Satisfaction of a monetary obligation or debt in cash or kind amounts to “payment”.

HMRC appealed to the Upper Tribunal arguing that s188(1) could easily have said “contributions made” or just “contributions” but it said ‘contributions paid, meaning that they had to be made in cash. Further, HMRC submitted that s195 FA 2004 provides that “contributions paid” in s188 includes contributions made by transferring shares but only if certain conditions are met. In this situation, the shares must be “eligible shares” and transferred within 90 days of acquisition by the individual. Why was this legislation needed if ‘contributions paid’ covered all shares transferred?

Decision

The Upper Tribunal accepted that, viewed in isolation, “paid” could be broad enough to encompass non-monetary payments. The Tribunal stated that the outcome of HMRC’s appeal depended on whether “paid” in s188(1) must be construed, not in isolation but in the context of Chapter 4 of Part 4 FA 2004, as “paid in money”.

The Upper Tribunal accepted HMRC’s argument about s195. In their view, it made no sense to restrict relief for transfers of eligible shares to a period of 90 days from acquisition if transfers of non-eligible shares or other assets were not so limited. This inconsistency disappeared if “contributions paid” was interpreted as restricted to monetary contributions.

Finally, the Upper Tribunal stated that their reading of “contributions paid” as restricted to monetary contributions was supported by s161 FA 2004 that applies for the interpretation of Chapter 3 of Part 4 of FA 2004 This section specifically states that:

“‘Payment’ includes a transfer of assets and any other transfer of money’s worth”.

Why was such clarification not also used for ‘contributions paid’ in Chapter 4 of Part 4? As a result, the Upper Tribunal concluded that it was Parliament’s intention that this extended meaning did not apply elsewhere in the statute.

HMRC v Sippchoice Limited [2020] UKUT 149 (TCC)

Trust rescission

Summary – The taxpayer had made a serious mistake that did not involve high-risk tax planning but rather, it was due to out of date advice that resulted in significant additional tax charges. It would be ‘unconscionable and unjust’ not to rescind the settlement.

Dr Heather Suckling, aged 80, was a retired GP whose disabled daughter, Cassandra, lived with her as she was unable to work or look after herself. She also has a son, Bill, who suffered from multiple sclerosis.

Dr Suckling had practised with three other GPs from a property where they owned equal shares in a 999-year lease. On retirement, the former GPs decided to keep the property and sub-let it. At the time of the hearing it was let on a 20-year lease due to expire in 2021, with Dr Suckling being entitled to gross rental income of £21,500 pa.

On death, Dr Suckling wanted her children to become entitled to the rental income from the property. By leaving her share of the property to them in her will, she understood that on her death, her 25% share in the property would be liable to IHT. However, she was concerned that her children would be unable to manage the property themselves and, following discussion with her former GP partners, agreed that they would take on the management of the property overall, such that they would also manage her share of the property for the benefit of her children as trustees.

A family friend was a solicitor, a member of STEP and Solicitors for the Elderly. On her advice, on 13th June 2016, Dr Suckling established an interest in possession trust. Her understanding was that the overall effect of setting up the trust would be tax neutral. While alive, she would continue to receive and pay tax on the rental income and on death, her estate would still pay IHT on her share of the property. Following her death, her share of the property would be managed by the trustees for the benefit of her children.

Unfortunately, the advice given was based on the tax position before 22 March 2006, when it was possible to establish a lifetime trust with a qualifying interest in possession. In October 2017, her then accountant advised that her understanding was not correct, as the advice that she had been given by her 'solicitor friend' was out of date and wrong. Under current law, she had created a relevant property trust, resulting in a number of CGT and IHT consequences that she was not aware of.

For CGT purposes, this was a settlor-interested trust, with the trust creation giving rise to a chargeable gain that could not be deferred using holdover relief.

For IHT there was:

- an immediately chargeable transfer of value on creation of the trust;
- an on-going IHT charge every 10 years; and
- a gift with reservation of benefit, so that her share of the property was still chargeable in her estate on death.

Clearly this was inconsistent with Dr Suckling's previous understanding. She was forced to change solicitors as her previous solicitor friend's firm refused to help. Through them, Dr Suckling applied to set aside the trust that she had created on the grounds of equitable mistake, claiming that when she established the trust, she did not appreciate that it would result in immediate Inheritance Tax and Capital Gains Tax consequences.

Decision

The Court referred to the case *Pitt v Holt* concerning the rescission for equitable mistake of a voluntary disposition:

"The equitable jurisdiction to set aside a voluntary disposition on the ground of mistake was exercisable whenever there was a causative mistake which was so grave that it would be unconscionable to refuse relief ..."

The court was satisfied that the trust was not set up as a tax mitigation exercise but rather, to enable Dr Suckling to ensure that the property could be managed for her children in a tax neutral manner. She had clearly attempted to understand the tax implications but she had no idea that the advice she received was out of date and wrong.

Dr Suckling had made a mistake that resulted in both CGT and IHT liabilities that she was not expecting. This was a significant and serious mistake. In the court's opinion, had the correct advice been given in the first place, Dr Suckling would not have entered into this trust.

In concluding the judge stated that:

"It would be unconscionable and unjust to leave the mistake uncorrected and I will therefore grant rescission of the Settlement."

Suckling v Furness and others [2020] EWHC 987 (Ch)

GAAR opinion on reducing estate's value

Four months before Mrs A died, she set up a company, using about £750,000 to subscribe for two types of shares: 720,000 Gifted Shares and 30,000 Retained Shares. Both types of shares carried full voting rights and equal rights to dividends and capital. The initial directors of the company were Mrs A and her son, Mr B.

Two months before Mrs A died, the directors set up a trust with £100 from the company as well as a gift by Mrs A to the Trust of her Gifted Shares. The beneficiaries were defined as employees, including executive directors and former employees, and their descendants.

Following her death, Mrs A's retained shares passed to her sons, Mr B and Mr C and Mrs B became a director of the company. The company's accounts for its first trading year showed net assets of just over £700,000 consisting of a property, listed investments bought after Mrs A's death and cash of about £480,000. Other than about £9,000 of rental income, there was no other income and little active business. In the 12 months that followed, little had changed, other than further properties had been acquired funded by loans and the rental income reported was £13,000. After Mrs A's death, Mrs B became a director, but neither Mr B nor Mrs B received any remuneration and at no time did the company have any other employees.

In this case, Mr B claimed that the transfer by Mrs A was not chargeable to IHT being an exempt transfer under s28 IHTA 1984, meaning also that the reservation of benefit rules do not apply either. S28 IHTA 1984 provides that a transfer by an individual of shares in a company is exempt from IHT if the transfer is to a trust for the benefit of employees.

GAAR's opinion

The panel stated that:

"If this had been a family company with a long standing workforce (whether or not including family members), gifting shares into the Trust might have had the legitimate aim of ensuring employees were incentivised to continue the business after the settlor's death and of diversifying share ownership or the benefits of share ownership."

However, in this case, there were no other employees and, with no active business, employees were not needed. This was not a trust set up for the benefit of employees. The panel concluded that the arrangements were used solely to benefit family members, structured to sidestep IHT where the donor does within 7 years following a gift.

The panel stated that the most comparable transaction would be to treat this as a lifetime gift to a family trust, outside s28 IHTA 1984, resulting in a 40% IHT charge as Mrs A died within three years. As Mrs A was also a trust beneficiary, the trust fund is also potentially subject to tax on her death under the gifts with reservation of benefit rules.

The entering in to and carrying out of the tax arrangements was not a reasonable course of action in relation to the relevant tax provisions.

<https://www.gov.uk/government/publications/gaar-advisory-panel-opinion-of-2-march-2020-reducing-an-estates-value-for-inheritance-tax-via-subscription-for-shares-in-a-new-company-and-gifting-s>

Paddock - grounds or agricultural property

Summary - A paddock adjoining a cottage was part of its grounds, making it residential property for SDLT purposes.

In 2017, Lynda Helen Myles-Till acquired a property for £1,332,500 that included a cottage, a detached double garage, a garden to the rear of the house and a grass-covered field known as the “paddock”. The paddock had previously been part of a neighbouring farm but that was no longer the case; it was not in use at the time of the sale and was owned by the seller.

HMRC argued that the paddock was part of the ‘grounds’ and in July 2018, having checked Lynda Helen Myles-Till’s amendment to her SDLT return for the property, HMRC issued a closure notice to the effect that the “paddock” was “residential property”, and that the amount of SDLT due, plus interest, was just over £21,000.

In November 2018, following an unsuccessful statutory review, an appeal was lodged with the First Tier Tribunal arguing that the paddock was not ‘grounds, but rather agricultural property, making the land purchase mixed use.

Decision

The Tribunal stated that the question to be decided was whether the paddock was land that was not residential property as defined in s116(1) FA 2003 and so liable to SDLT at lower rates.

With no statutory definition for ‘grounds’, a term that is now rather out-of-date, the Tribunal relied on two recent cases (*Hyman and Hyman v HMRC [2019] UKFTT 469 (TC)* and *Goodfellow and Goodfellow [2019] UKFTT 750*). In addition they considered HMRC’s guidance in its manuals that they commented were both “helpful and balanced”, and the definition of ‘grounds’ in the Oxford English dictionary. The Tribunal stated that to constitute grounds, the paddock had to be an appendage to the cottage with no self-standing function. The paddock was comparable in size with the grounds of other residential properties in the area and it was not in commercial use when bought.

The appeal was dismissed.

Lynda Helen Myles-Till v HMRC (TC07633)

Refund of higher SDLT

Under certain circumstances, higher rates of SDLT are due when buying a second residential property (or a part of one) for £40,000 or more, and the individual already owns another residential property.

If the owner subsequently sells or gives away their previous main home within 3 years of buying the new one, they can apply for a refund of the higher SDLT rate part of their Stamp Duty bill.

New guidance from HMRC confirms that under exceptional circumstances, taxpayers will still be able to apply for a refund if:

- they bought a new home on or after 1 January 2017;
- have been unable to sell their previous home within 3 years; and
- the delay is due to events that are outside the taxpayer's control.

The guidance specifically states that this may include delays due to the outbreak of the coronavirus (COVID-19) pandemic or due to an action taken by a public authority, preventing the sale.

<https://www.gov.uk/guidance/stamp-duty-land-tax-buying-an-additional-residential-property#history>