

Business tax update (Lecture B1381 – 20.46 minutes)

SEISS conditions not met

Summary – The taxpayer did not trade in 2019/20 and so was not eligible for the first two payments under the Self Employment Income Support Scheme.

David Hamill applied and received the first two support payments under the Self Employment Income Support Scheme (SEISS).

Later, in response to an email from HMRC, he confirmed that he had been self-employed in 2018/19 and had submitted his tax return before 23 April 2020. However, he also stated that he had not traded in 2019/20 because, despite trying to find work, he had been unsuccessful. As a result, he had signed on for Universal Credit, which he was still doing at the time of his reply.

HMRC contacted him regarding his trading status and he stated that he had ceased trading on 31 October 2018, which he told HMRC when submitting his Self Assessment return for 2018/19. Indeed, no Self Assessment tax returns had been lodged for 2019/20 or 2020/21. As a result, HMRC stated that no grant was due.

David Hamill appealed, stating that:

- at all times he had been totally honest and transparent in his dealings with HMRC.
- when he had claimed SEISS 1, he had been told that he was entitled to it.
- HMRC had emailed him telling him to apply for SEISS 2 and he had thought that because he had been entitled to the SEISS 1, he would be entitled to the second.
- because HMRC had confirmed his entitlement to the two SEISS payments, it was totally wrong to “have changed the rules, post payment, purely for financial and political gain.”

Decision

The First Tier Tribunal accepted that David Hamill had intended to trade in 2019/20 but ultimately had not done so and ceased trading in 2018/19.

At the time that the SEISS grants were paid, HMRC had no way of checking whether David Hamill had traded post 2018/19 as the due date for filing a tax return for 2019/20 was not until 31 January 2021; some time after the SEISS claims were made.

The Tribunal accepted that David Hamill had been mistaken by thinking he was entitled to the grants, and no one could blame him for that. Despite this, the fact was, he was never eligible for the support payments and HMRC was correct to recover the sums paid.

The appeal was dismissed.

David Hamill v HMRC (TC08827)

Director's receipt was a distribution

Summary - Payment to a shareholder was a distribution, meaning the taxpayer could not claim a loan relationship debit in respect of the sum paid.

Shinelock Ltd was a property rental company that was owned by its director/shareholder, Mr Ahmed, who was non-UK resident.

In March 2009, a property was acquired for £725,000, registered in the company's name but the deposit was paid for by Mr Ahmed. During ownership, the property was rented out and the rental income was paid into an account specified by Mr Ahmed, over which the company had no control.

In return for financing the purchase, it was verbally agreed that when sold, a sum equal to any gain made on sale would be paid to Mr Ahmed. On sale, £305,000 of the £1.03 million proceeds was duly paid to Mr Ahmed.

Mr Ahmed reported the disposal in his UK Self Assessment tax return but, as a result of his non-UK resident status, no tax was due as the sale occurred before the non-resident rules changed for disposals of UK property.

Following an enquiry, HMRC concluded that Shinelock Ltd was liable to corporation tax on the property gain. The company accepted that it was the beneficial owner of the property but argued that the payment to Mr Ahmed was deductible as a non-trading loan relationship deficit, as the gain represented the sum owed in loans to Mr Ahmed.

HMRC disagreed, stating that the payment was a distribution.

The First Tier Tribunal dismissed the appeal, finding that there was neither a distribution, nor a loan relationship debit.

The company appealed to the Upper Tribunal.

Decision

The Upper Tribunal found that the property was beneficially and legally owned by the company throughout the period of ownership. During that time, it was shown in the company's accounts, together with the relevant rental income, interest charge and expenses.

The gain, paid as a sum to Mr Ahmed, formed part of the company's business which included the acquisition, holding and disposal of the property. As a result, the payment of the gain to Mr Ahmed, shareholder, constituted a distribution under s.1000 CTA 2000, (being a distribution in respect of 'special securities' under paragraph F). Special securities includes where consideration is given dependent on the results of the business as was the case here.

The Upper Tribunal considered s.307 CTA 2009 on when loan relationship transactions should be brought into account for tax. To recognise a debit for tax purposes, it must be recognised in the company's profit and loss account as prepared in accordance with GAAP. The company's accounts did not recognise the gain on the property or the payment to Mr Ahmed.

The company's appeal was dismissed.

Capital allowances on hydroelectric scheme

Summary – Expenditure incurred on building various underground conduits and tunnels forming part of a hydroelectric power generation scheme qualified for plant and machinery capital allowances.

SSE Generation Limited had claimed capital allowances on the construction of a hydroelectric scheme in Scotland. The scheme involved a power station generating electricity using high pressure water to drive a turbine.

The case heard by the Supreme Court concerned items which were conduits of various kinds that channelled water to, through and from the power station.

Under its common law definition, both parties agreed that the disputed items were 'plant'. The issue was whether the expenditure was excluded under s.22 CAA 2001 (List B) as expenditure incurred on a 'tunnel, bridge, viaduct, aqueduct, embankment or cutting'. If classed as 'tunnels' or 'aqueducts' under List B, the expenditure would not qualify for capital allowances.

Decision

The Supreme Court stated that the items within List B were grouped thematically, with item 1 (tunnel, bridge, viaduct, aqueduct, embankment or cutting) containing structures relating to the "construction of transportation routes or ways."

The common meaning of 'tunnel' could mean any type of 'subterranean passage'. However, when read in the context with the other words within item 1 (so with 'bridge' and 'viaduct'), it must mean an underground passageway allowing access from one place to another of persons or means of transport.

The Court rejected HMRC's argument that 'aqueduct' simply meant a water conduit. The ordinary meaning of the word "aqueduct" could mean either a conduit or elevated structure to carry water. However, when read in context together with 'viaduct', it was clear that that the latter applied.

With the List B references to 'tunnels' and 'aqueducts' limited to structures used for transportation, List B did not include expenditure on structures forming part of such an electricity generating scheme.

HMRC's appeal was dismissed.

HMRC v SSE Generation Ltd [2023] UKSC 17

Hardship application

Summary – Accepting the director's oral evidence that the company had no assets, it could not generate any income and could not trade, the hardship application was allowed.

ABA Motors Limited was incorporated in March 2019 and traded by selling used cars and light motor vehicles. The company sourced vehicles for its customers from UK dealers, and then transfer the vehicles to its customers, who were based in southern Ireland. While exports of the vehicles were zero rated for VAT, the company was required to pay VAT to the UK dealer.

On 29 July 2021 HMRC raised assessments on the basis that ABA Motors Limited was involved in missing trader fraud, and so was not entitled to repayment of the VAT which it incurred on its purchases. The total amount of VAT assessed was £110,310.

The company failed to provide further information requested by HMRC which included details of assets, bank statements, accounts, financial investments, and other financial information. Consequently, on 23 June 2022, HMRC refused the hardship application.

The company appealed, making a hardship application to the First Tier Tribunal.

Decision

The First Tier Tribunal stated that it was for the company to establish hardship and agreed that, based on the available evidence, HMRC 'had no alternative but to refuse hardship'. However, the First Tier Tribunal stated that it could consider all of the evidence which had been presented on appeal, not just that which had been provided to HMRC.

The judge accepted the director's oral evidence which was found to be "comprehensive, coherent, and, to my mind, wholly plausible." Based on that evidence the First Tier Tribunal found that ABA Motors Limited had no assets, it could not generate any income and could not trade. The First Tier Tribunal stated that "It was not a question of hardship, it simply could not pay" the VAT bill.

The hardship application was allowed.

ABA Motors Limited v HMRC (TC08811)

Items qualifying for DIY housebuilders scheme

Summary – The taxpayer was entitled to a VAT refund under the DIY housebuilder scheme where items had been correctly standard rated by suppliers. Where items should have been zero rated by suppliers, the refund was denied.

Steven Mort built a dwelling in Bury and submitted a claim for VAT to be refunded under the DIY Housebuilders scheme. Initially that was for VAT of £135,671.72 to be refunded but by the time of the appeal it had been agreed that the sum under appeal was just over £37,000.

HMRC accepted that the property qualified as a dwelling but continued to refuse the sum under appeal as under s.35 VATA 1994 a person lawfully constructing a building designed as a dwelling can recover VAT properly charged on goods used for that construction. However, the scheme does not allow VAT recovery where VAT has not been properly charged or on services.

Decision

In reaching their decision, the First Tier Tribunal considered each invoice in turn, concluding that Steven Mort was able to recover a further £17,000 of VAT.

Claims relating to laying tarmac for the path and drive, supplying and installing steel roof beams and wooden flooring were all denied. In each case, the First Tier Tribunal found that the service element of the supply was more significant than the goods. Under Items 2 Group 5 Schedule 8 VATA 1994, these items should have been treated as zero-rated services rather than as standard rated supplies of building materials. These claims were rejected.

However, some items were found to be correctly standard rated and so were allowed. These included supplying and installing shutters and a roller screen roof system, automated gates and insulated garage doors as well as the manufacture and supply of skirting, staircase components and fire doors. In each of these cases, the cost breakdown showed that the goods element of the invoice far outweighed the installation service proportion and so these claims were allowed.

Finally, certain elements were found not to be building materials at all but rather they were supplies of furniture. These were bedroom furniture, including a wardrobe 'system' described as "Furniture, headboard, bedside cabinets, mirrored wall and master dressing room furniture including lighting to wardrobes". The Tribunal found that this was not a 'basic' fitted wardrobe created within a building alcove, but rather this complex combination of shelving, rails and drawers, which cost around £80,000, was "an item of furniture in its own right." The related VAT was not recoverable.

Interestingly, the First Tier Tribunal criticised HMRC's approach in this case. Where VAT has been incorrectly charged and so is not recoverable by the 'homeowner', HMRC can choose to pursue such a case only where the supplier has not declared and paid the incorrectly charged VAT.

Steven James Mort v HMRC (TC08801)

Clearance application

Summary - Without full and frank disclosure, the taxpayer had no legitimate expectation that the non-statutory clearance would not be revoked by HMRC.

The dispute concerned the VAT treatment of a training programme for airline cadets.

Briefly, each cadet had to pay a bond to the taxpayer to cover the costs of their training, on completion of which the bond was transferred to the relevant airline which employed the cadet.

The taxpayer had obtained a non-statutory clearance (NSC) from HMRC which gave a favourable VAT treatment, but HMRC later revoked the ruling on the basis that the taxpayer had not given full and frank disclosure in its application. In particular, it had not referred to the fact that in many cases the funding would be through a salary sacrifice arrangement. Had that been disclosed, HMRC would have not given the ruling.

The draft application for the ruling showed that the taxpayer's advisers had expressly referred to a potential salary sacrifice arrangement but the company had asked for the reference to be removed.

The taxpayer claimed it had legitimate expectation to rely on HMRC's ruling.

Decision

The High Court had 'no hesitation' in concluding that the inaccurate and misleading nature of the NSC request was material.

There had not been full and frank disclosure, and therefore the taxpayer had no legitimate expectation that the ruling would not be revoked by HMRC.

R (on the application of) Airline Placement Limited v CRC, King's Bench Division, 19 May 2023

Adapted from the case summary in Taxation (8 June 2023)