

Personal tax update (Lecture P1381 – 21.03 minutes)

Employed doctor's expenses

Summary – Expenses claimed by the taxpayer were largely denied as they were not incurred necessarily for use in performing the duties of his employment.

Dr Nduka worked in several NHS hospitals as an employed doctor. In December 2016 he was suspended from the medical register for four months by the General Medical Council due to misconduct.

In his 2016/17 tax return, he included a claim for employment-related expenses of £43,500 relating to the following items:

- £27,830 for legal fees relating to his suspension;
- £11,800 for accommodation;
- £3,000 for dental costs;
- £499 for his subscription to the Royal College of Obstetricians and Gynaecology.
- The balance related to other costs relating to travel to attend clinics, computer costs, training and childcare costs paid to his wife.

With HMRC having opened an enquiry into his tax return, Dr Nduka initially provided a list of expenses but this did not match what was contained within his tax return. With Dr Nduka refusing to attend a meeting, HMRC closed the enquiry and disallowed the expenses.

Dr Nduka appealed.

Decision

Having produced three different list of expenses, Dr Nduka settled on the third but was unable to provide supporting evidence for many the sums claimed. Consequently, the First Tier Tribunal allowed the claim for his professional subscription but denied the rest.

- Despite the legal fees being related to his work, the Tribunal found that these were not necessarily incurred in the performance of his duties. They were personal expenses, incurred to enable him to continue working as a registrar.
- The accommodation costs were disallowed as although his employer may have required him to live where he did, they were not incurred 'wholly, exclusively and necessarily' in the performance of his duties. There were days and nights when he was off duty and the flat was simply his home.
- The dental costs and childcare costs were personal expenses and so were disallowed.
- His travel costs related to normal commuting when travelling to his permanent, and not temporary, workplaces.

Finally, the cost of the computer was disallowed as his employment contract did not require him to have his own computer and there was no proof of purchase. Had it been allowed, the cost would have been time apportioned to reflect any private use.

Dr Harry Nduka v HMRC (TC08818)

CJRS and social media

Summary – As a result of a director’s online activity during lockdown the director was ineligible for payments under the Coronavirus Job Retention Scheme (CJRS).

Glo-Ball Group Limited incorporated on 21 September 2018 and ran parties, discos, community events and after-school clubs for children aged 0 to 11 years old. It also runs parent and baby groups. The company’s directors and employees were Michelle Dowler and Samuel Dowler.

Before and after lockdown, the company would hire a hall at which it intended to put on classes, would then advertise those classes via social media including Facebook. 90% of its customers came from online interest, with both directors spending a great deal of time on social media generating business interest. This was estimated to be around 15 hours a week.

All company activities stopped during the pandemic and between 23 March 2020 to 30 September 2021 the company made claims under the CJRS, a period during which no furloughed employees were allowed to work. While furloughed, Michelle continued posting on the company’s Facebook pages, typically only once a week to advertise a virtual event, ask clients to support the company’s nomination for an award and informing customers of the company’s plans once lock down ended.

HMRC raised assessments to recover the grants paid arguing that the director had been working while furloughed and so was ineligible for support under the CJRS. Following review, Glo-Ball Group Limited appealed to the First Tier Tribunal.

Decision

Under the CJRS, directors were still allowed to carry put their statutory duties but were not permitted to undertake any other work.

The First Tier Tribunal found that the director’s postings on Facebook was work undertaken “to maintain and enhance the goodwill of the appellant’s business and to maintain its brand awareness”. The Tribunal acknowledged that the director’s activities were understandable but stated that:

“the concept of work, in our view, does not distinguish between work which might have an immediate impact on revenue generation and activities which might have an impact on the ability of a business to generate revenues in the future. Both activities comprise work.”

As she had not ceased all work during the furlough period, she was ineligible to claim under the CJRS for the period 1 March 2020 to 30 June 2020. This also made her ineligible under the more flexible CJRS scheme that followed between 1 July 2020 and 31 October 2020.

Glo-Ball Group Limited v HMRC (TC08823)

Loans were employment income

Summary – Assessments raised by HMRC were valid in-time assessments, with the loans representing taxable employment income.

Dr Sheth used two “contractor loan” tax avoidance schemes that involved him providing services to a UK employer, but via the medium of a contract of employment with an offshore employee benefit trust. Under this scheme, he was employed by the offshore entity, who paid him a modest salary with the balance of monies payable by way of a loan from the trust. He received money from the employment benefit trusts as follows:

- 2009/2010 he received £72,577 from an offshore trust relating to Sanzar;
- 2010/2011, he received £45,869 from the same Sanzar offshore trust, and £16,673 from either Darwinpay or a trust relating to Darwinpay.

HMRC’s view was that the loans from the employee benefit trust were earnings under s. 62 ITEPA 2003 and so raised discovery assessments to collect the tax payable.

Dr Sheth disagreed, arguing that:

- the assessments raised were invalid and were not served on him properly;
- loans were not taxable employment income.

He also raised a number of procedural and other arguments including the fact that he had repaid some of the loan.

Decision

There was no disputing that Dr Sheth had participated in the loan schemes as they were disclosed in his tax returns. The First Tier Tribunal concluded the evidence confirmed that the loans received replaced salary for employment services provided. Consequently, he was liable to income tax on those loans. Whether he intended to repay those loans was irrelevant.

The Tribunal turned to the issue of whether the discovery assessments were valid, finding that they were. The First Tier Tribunal rejected the taxpayer’s argument that the whitespace disclosure on his tax return was sufficient to alert a hypothetical officer to a potential insufficiency of tax. The DOTAS disclosures were said to be “confusing, misleading, and as far as that contractor loan scheme is concerned, deficient of relevant factual and statutory information.”

The Tribunal accepted that the disclosure might have alerted the hypothetical officer to undertake further enquiries into the nature of the loans. However, this was not enough as the disclosure must put the hypothetical officer on notice of an actual insufficiency. Referring to *HMRC v John Hicks* [2020] UKUT 12, the Tribunal stated:

“That disclosure set out brief but comprehensive details of the individual to whom it applied (a self-employed trader carrying on a business on a commercial basis with a view to profit); the tax magic (the trader acquires at a discount the right to receive dividends declared but not yet paid); the statutory provision which is relevant (the income is not taxable due to section 730 TA 1988); the result (a net loss for tax purposes to the trader); and the tax benefit for the trader (a trader who works more than 10 hours a week can obtain sideways loss relief).”

The Tribunal found that Dr Sheth's disclosure dealt with few, if any, of these points 'in any, or any adequate detail.' HMRC was entitled to raise the discovery assessments.

The appeal was dismissed.

Dr Pradip Kumar Sheth v HMRC (TC08790)

Invalid negligible value claim

Summary – The First Tier Tribunal had no jurisdiction to consider HMRC's refusal of a negligible value claim that was not made in the form required.

In his 2015/16 self-assessment tax return Robert Williams claimed a £200,000 loss (s.253 TCGA 1992) in relation to a loan made to a Sierra Leone trading company.

HMRC enquired into this return. During which time, it was established that the loan had been converted into shares in a British Virgin Islands company, the trading company's parent company.

Robert Williams's capital contribution for the shares was £250,000 of which £200,000 was payment for the loan and £50,000 was plant and machinery given to the company. This was supported by a shareholder agreement. HMRC asked if Robert Williams wished to make a negligible value claim (s.24 TCGA 1992) and requested further information to enable such a claim to be considered.

In March 2019, having provided the information requested, Robert Williams' accountants confirmed that their client:

- was withdrawing their claim for losses under s.253 TCGA 1992;
- did wish to make a negligible value claim.

On 15 July 2019, HMRC wrote stating that in the absence of any valid negligible value claim under s 24 TCGA, the loss of £200,000 would be removed from the 2015-16 capital gains tax computation. HMRC then issued a closure notice to amend the return and remove the loss from the tax return.

Robert Williams appealed on the grounds that the negligible value claim was valid and HMRC applied for that appeal to be struck out as the appropriate claim had not been made.

Decision

The First Tier Tribunal confirmed that, when making a negligible value claim, there is no specified time requirement for the claim to be made.

The Tribunal noted that as the negligible value claim was not made within the taxpayer's 2015/16 Self Assessment tax return, it was necessary to refer to Schedule 1A TMA 1970 which sets out the necessary components of a claim. The negligible value claim can be made in any form, provided that certain requirements are satisfied. The accountants' letter dated September 2018 did not satisfy those requirements as it did not contain a declaration signed by the taxpayer to the effect that 'all of the particulars given in the form are correctly stated to the best of the information and belief of the person making the claim' as required by paragraph 2(4) of Schedule 1A.

S.31 TMA 1970 contains no right of appeal against HMRC's decision not to admit a negligible value claim that is not in the required form. As result, the First Tier Tribunal did not have the jurisdiction to determine this case or to consider the conduct of HMRC not to allow the claim or refer the taxpayer to the appropriate guidance.

HMRC's application to strike out the appeal was allowed.

NOTE: Andrew Hubbard (Taxation, 1 June 2023) stated that as there is no time limit for making a negligible value claim, he could still do so. He stated that:

“So, as the judge remarked, it would still be open for the taxpayer to put in a fresh claim in valid form but that would trigger a loss in the current year (or under TCGA 1992, s 24(2) in the previous two years). It wouldn't reinstate a claim for the year which the taxpayer had originally sought to use the loss so, in practice, the ability to remake the claim might not be of any practical benefit to the taxpayer.”

Robert Williams v HMRC (TC08820)

Avoidance scheme was no mistake

Summary - The transfer of shares to an employee benefit trust which was part of an inheritance tax scheme was not a 'mistake'.

Mr and Mrs Bhaur were partners in a property partnership that owned 35 properties.

Looking to substantially reduce any inheritance tax payable, the couple entered into a scheme under which the business was transferred to an employee benefit trust, which excluded Mr and Mrs Bhaur but benefited younger family members, including their son.

After it became apparent that the scheme was ineffective, the couple applied to the High Court for the last of these transactions to be set aside on the grounds of mistake.

The High Court dismissed the claim, holding that there had not been a mistake (i.e. relating to a past or present matter) but instead a misprediction (relating to a possible future event); the couple had miscalculated the consequences to them if the scheme went wrong.

The couple appealed.

Decision

The Court of Appeal observed that the distinction between a mistake and a misprediction could be blurred. It was not necessary to make the distinction here, because, even if there were a mistake, whether relief should be granted would depend on whether it would be 'unconscionable or unjust' for the donee to retain the benefit of the transfer.

The claimants may have been mistaken in their understanding of the possible adverse consequences if the scheme failed, but they knew that there was a risk and decided to take it anyway.

Additionally, the Court of Appeal held that the scheme being an entirely artificial tax avoidance scheme 'was a very weighty factor against the grant of any relief'.

It therefore concluded that it would not be unjust or unconscionable to refuse relief and so dismissed the appeal.

Bhour and others v Equity First Trustees (Nevis) Ltd and others [2023] EWCA Civ 534

Adapted from the case summary in Tax Journal (2 June 2023)

Pony paddock not residential for SDLT

Summary – A commercially let paddock acquired at the same time as a house and its grounds qualified as mixed use for SDLT purposes.

On 11 December 2020 Taher and Zahra Suterwalla acquired a house to be used as their home. The purchase included an indoor swimming pool, tennis court, pavilion and gardens as well as a paddock to the rear of the property. The paddock was not visible from the house and access was via a small gate.

The couple filed the relevant SDLT return on the basis that the property was mixed use as, on completion, the paddock was let on a commercial basis under a one-year grazing lease.

In August 2021, HMRC opened an enquiry into the return. In November 2021 HMRC issued a closure notice amending the SDLT return to charge SDLT at the residential rate on the basis that the paddock was part of the grounds.

Following a review, the couple appealed.

Decision

The First Tier Tribunal disagreed with HMRC's claim that the entire property was residential as it was registered in a single folio and was sold as an equestrian property. The Tribunal found that:

- there were two separate folios:
 - ON53530 being the dwelling house, gardens and tennis court; and
 - ON277027 being the paddock.
- nowhere in the sales brochure was the word "equestrian" used and there were no stables or other suitable accommodation for housing horses appearing in the sales brochure.

Further, the Tribunal found that:

- The grazing lease, which was effective from the completion date, was of commercial benefit to the couple. "Although the rent was not large, it was more than a peppercorn and the advantage of ... horses keeping the grass in order was of considerable financial benefit to the Appellants."
- The lessee was able to access the paddock from the bridle path without having to enter the couple's garden;

- The couple would not have bought the paddock if it had been possible to exclude it from the purchase. It was not needed for their reasonable enjoyment of the dwelling having regard to its size and nature.

The First Tier Tribunal found that the property purchase qualified to use the non-residential rates for SDLT purposes.

The appeal was allowed.

Mr Taher Suterwalla and Mrs Zahra Suterwalla v HMRC (TC08826)

Information request was reasonable

Summary – The taxpayer’s company appeared to be his ‘personal service company’ and should not be ‘deployed as a smokescreen to deflect’ HMRC from enquiring into the taxpayer’s personal tax affairs’.

Dr Edward Leen was a clinical consultant who worked in the NHS and in private practice.

All his private consultancy fees were declared through his company, GRI Research Laboratories Ltd.

During an enquiry into his Self Assessment tax return, HMRC requested details of his consultancy work completed for various named entities, documents to show if consultancy fees had been declared through another entity and bank statements.

Dr Leen did not reply, so HMRC issued a notice under Sch.36 FA 2008 requesting the information.

Dr Leen’s agent told HMRC that the consultancy fees had been declared through GRI Research Laboratories Ltd and provided a breakdown of the fees received and a copy of the company return.

This resulted in HMRC finding discrepancies between the company turnover and the sums shown on Dr Leen’s bank accounts, as well as a reduction in shareholder funds without corresponding dividends or salaries.

HMRC wrote to the agent with questions about this and sent the taxpayer a second Sch. 36 FA 2008 notice asking about these discrepancies.

Dr Leen appealed, saying that GRI Research Laboratories Ltd was separate from him and its records could not be reasonably required for checking his personal tax position.

Decision

The First Tier Tribunal accepted that HMRC had reason to suspect that some fees did not appear to have been included in GRI Research Laboratories Ltd’s turnover. While the discrepancy may not have been intended to mislead HMRC, an explanation was reasonably required. The Tribunal was satisfied that there were grounds for HMRC to suspect the taxpayer's return was inaccurate.

The First Tier Tribunal confirmed the notice and the appeal was dismissed.

Edward Lam Shang Leen v HMRC (TC08812)

Adapted from the case summary in Taxation (18 May 2023)

Holiday for Self Assessment helpline

On 8th June 2023, HMRC announced that for three months from 12 June 2023 it will trial directing self-assessment queries from its helpline to its digital services, including its online guidance, digital assistant and webchat.

Apparently, HMRC claim that this will free up the equivalent of 350 full-time advisers to take urgent calls from taxpayers who really need to speak to an adviser.

The helpline will re-open on 4 September 2023 to enable taxpayers to receive expert support in the 5 months running up to the 31 January Self Assessment deadline.

The Chartered Institute of Taxation (CIOT) President Gary Ashford said:

“This helpline closure is another flashing indicator that HMRC can’t cope with everything it is being tasked with.”

<https://www.gov.uk/government/news/hmrc-to-trial-seasonal-self-assessment-helpline--2>

Voluntary NIC Deadline Extended Again

On 12th June 2023, HMRC announced that individuals now have until 5 April 2025 to fill gaps in their National Insurance record from April 2006 that may increase their State Pension.

With the deadline extended, taxpayers now have a longer period to be able to fund any gaps, if they choose to do so.

All relevant voluntary National Insurance contributions payments will be accepted at the rates applicable in 2022 to 2023 until 5 April 2025.

<https://www.gov.uk/government/news/deadline-for-voluntary-national-insurance-contributions-extended-to-april-2025>