

## Personal tax update

(Lecture P1181 – 19.20 minutes)

### 2020/21 NIC limits and thresholds

NIC limits and thresholds for 2020/21 have been announced and draft regulations have been laid before Parliament.

The above inflation increase in the primary threshold and the lower profits limit is a move towards the government's aim to raise these amounts to align with the personal allowance.

#### *Class 1 NIC*

	<u>2020/21</u>	<u>2019/20</u>
Lower earnings limit	£120 per week £520 per month £6,240 per year	£118 per week £512 per month £6,136 per year
Primary threshold	£183 per week £792 per month £9,500 per year	£166 per week £719 per month £8,632 per year
Secondary threshold	£169 per week £732 per month £8,788 per year	£166 per week £719 per month £8,632 per year
Upper earnings limit	£962 per week £4,167 per month £50,000 per year	£962 per week £4,167 per month £50,000 per year

#### *Class 2 NIC*

	<u>2020/21</u>	<u>2019/20</u>
Weekly amount	£3.05	£3.00
Small profits threshold	£6,475	£6,365

#### *Class 3 NIC*

	<u>2020/21</u>	<u>2019/20</u>
Weekly amount	£15.30	£15.00

#### *Class 4 NIC*

	<u>2020/21</u>	<u>2019/20</u>
Lower profits limit	£9,500 pa	£8,632 pa
Upper profits limit	£50,000 pa	£50,000 pa

## Avoiding the agency trap

An agency is a person or business that makes arrangements for someone to work for a third person, the end client. HMRC guidance states that employment intermediary (or agency) rules must be followed if all of the following conditions apply:

- the worker personally provides services to the client;
- there is a contract (verbally or in writing) between the client and agency;
- as a consequence either the worker's services are provided or the client, directly or indirectly, pays for the services.

A couple of examples taken from HMRC's guidance will explain how these conditions apply. More examples can be found by following the link at the end of this article.

### *Example 1 - agency finds Nick work*

Nick registers with various agencies. The Find-a-job Agency puts him in touch with a person who wants a decorator for 2 weeks.

Nick will:

- engage directly with the client to establish what work they want doing, carry out the work and provide the client with an invoice
- pay the agency 5% of the fees he charged the client

Nick is personally providing the services to the client but the agency legislation does not apply because there is no contract between the client and the agency.

### *Example 5*

John enters into a contract with Tyneside Conservatories Limited (TCL) to supply and fit a conservatory. Once TCL have the structure in place John is so impressed with the work he asks TCL to provide workers who can install electrics and central heating. TCL tells John he can supply the labour at £40 per hour and John agrees to pay TCL for the workers providing their services.

Both the plumber and the electrician, the workers, personally provide their services to John, the client. There is a contract between TBL (the agency) and John (the client) to provide the workers' services, so the conditions in the agency legislation about a worker personally providing their services and the contract appear to be satisfied. However, it is possible that the agency rules do not apply as the work may fall into one of the excepted categories (see below)

### *PAYE and reporting*

Under the agency rules, your client will need to treat the workers it supplies as if they were their employees and account for PAYE and national insurance on the payments they receive from the company.

However, where another party is the contractual employer, such as an umbrella company, that party should be responsible for accounting for PAYE and national insurance on the worker's pay, including the money received from the work that you have arranged.

### *Exceptions to agency rules*

HMRC guidance states that the agency rules do not apply if the worker falls into one of the following categories:

- worker provides their service without either the agency or end client having the right to supervise, direct, or control how they do the work;
- Worker always works from their own home, or on premises not controlled or managed by the client - unless the type of service being provided to the client means the worker has to be at those premises;
- provides their services as an actor, singer, other entertainer or model.

This means that where a worker is professionally qualified, skilled or experienced and accepts an engagement, they should not fall within the agency rules provided they are not subject to supervision, direction or control over the manner in which the services are supplied.

So what is meant by each of these three terms?

1. Supervision: Someone checks or has the right to check the work that the worker is doing to make sure it meets a required standard. This can involve helping the worker develop their skills and knowledge.
2. Direction: Someone provides instructions, guidance, or advice as to how the work must be done.
3. Control: Here someone tells a worker how to do the work, with the possibility that they could ask the worker to move from one job to another.

### *Reporting where PAYE does not apply*

If your client arranges the services of other workers to a customer but consider that they are not responsible for PAYE and NI, they must send quarterly reports to HMRC giving details of the worker's name and address plus:

- how they were engaged and paid for their work;
- why your client believes they are not responsible for PAYE and NI;
- details of anyone else who is an agent in the supply chain for the worker's services.

### *Not just employment agencies*

Remember, agency rules do not just apply to employment agencies. Individuals, partnerships or companies supplying workers to clients could also be caught by these rules. In theory, if your client is undertaking a project for a company, and that company asks your client to find a worker to do some work for them, your client could be caught by these rules. To avoid the rules, they should leave the worker to contract directly with the end client as the rules do not affect workers engaged directly by the end client. Clearly this is not always practicable.

<https://www.gov.uk/government/publications/employment-intermediaries-personal-services-and-supervision-direction-or-control/employment-intermediaries-personal-services-and-supervision-direction-or-control>

## **IR35 review**

A common issue raised over the course of the review has been businesses' concerns over what payments the rules apply to and from when. The government has listened and taken action early to give businesses certainty and more time to prepare to ensure the smooth and successful implementation of the reforms that come into force in April.

HMRC has announced ahead of the publication of the government's review that changes to the operation of the off-payroll working rules will only apply to payments made for services provided on or after 6 April 2020. Previously, the rules would have applied to any payments made on or after 6 April 2020, regardless of when the services were carried out. It means organisations will only need to determine whether the rules apply for contracts they plan to continue beyond 6 April 2020.

*<https://www.gov.uk/government/news/hmrc-announces-change-to-the-off-payroll-working-rules>*

## **Main residence relief denied**

*Summary – The fact that the property was marketed for sale within two months of tenants moving out, showed that the taxpayer never intended to occupy the property permanently or with any degree of continuity.*

Carol Adams bought a two-bedroom terraced house in Hampstead in 1994. At this time she was living in Wellington House in Belsize Park, and working in central London

She carried out extensive works to restore the Hampstead property to high standards, with the intention being that she would occupy the property in her retirement. Once restored, she let the property for some 18 years with the last tenants moving out in August 2013.

In September 2007, following the sale of her Belsize Park property, she bought Wild Meadows Livery in East Sussex. She moved into the property with her niece and together ran a livery business. The business was unsuccessful and closed on 31 October 2012.

When her tenants moved out in August 2013, Carol Adams claimed that she moved in to live in the property at the same time as renovation works were undertaken. On 9 October, the Hampstead property appeared for sale on Zoopla with all furniture and kitchen appliances available.

Having sold the property for a substantial gain, she claimed that she was living in the property as her main residence between 14 August 2013 and 23 February 2014. Under the legislation in force at the time, she argued that the last 36 month qualified as deemed occupation for PPR relief. She filed her tax return for 2013/14 claiming private residence relief of £113,941 and lettings relief of £40,000.

HMRC denied the relief arguing that she had never occupied the property as a residence at all or alternatively, if she had occupied it as a residence, the property was not her main residence.

Carol Adams appealed

## *Decision*

The First Tier Tribunal stated that where a person has more than one residence, and has not made a nomination under 222(5) TCGA 1992, a taxpayer's main residence is the one that is properly regarded as the individual's principal or more important residence.

The Tribunal found that Carol Adams bought the East Sussex livery property primarily as a place to live and, that it was her main residence from 28 September 2007 until, at least, August 2013 and from February 2014 until today.

The Tribunal rejected the idea that Carol Adams was living in her Hampstead property as her main residence in September 2013. There was evidence that she had paid council tax and some gas and electricity bills in relation to the property, but this did not show that there was occupation of the property as a residence. The photos on the Zoopla website showed no evidence that the property was being occupied as her main residence. There were no clothes in the open wardrobe in the bedroom, no toiletries or towels on the towel rails in the bathroom and the shelves in the rooms were empty. In addition her two Labrador dogs had remained at all times in East Sussex. The property had never been her main residence and relief was denied.

The appeal was dismissed.

*Carol Adams v HMRC (TC07552)*

## **Sale of company – three points of appeal**

*Summary – Entrepreneurs' relief was denied as the company's activities were substantially non- trading but the transactions in securities rules did not apply. Overseas money loaned was taxable as remitted income when payments were made by the UK company.*

The case involved three companies. Dr and Mrs Allam owned Allam Marine Ltd (AML), an engineering company and Allam Development Ltd (ADL) a property development company owned by Dr Allam. In late 2010, for commercial reasons linked to acquiring Hull City Football Club, shares in AML were transferred to a new company controlled by Dr Allam and his wife, Allamhouse Ltd. HMRC gave clearance that the share transfer would not be caught by the transactions in securities legislation.

In July 2011, Dr Allam transferred shares in ADL to AML Ltd for £4,950,000 and claimed entrepreneurs' relief of £524,000. HMRC rejected the claim arguing, in accordance with their guidance, that its activities included 'to a substantial extent activities other than trading activities'. Under that guidance 'substantial' meant more than 20%. By contrast Dr Allam argued that this percentage should be at least 50%.

On 24 March 2017, HMRC issued a counteraction notice assessing income tax of just over £1.3 million that HMRC said was "the amount of tax which [Dr Allam] would have been liable to pay if [he] had received the consideration [of £4,950,000] as a qualifying distribution". HMRC accepted that there was a commercial objective to the transactions and that Dr Allam wanted to receive cash because he regarded ADL as his pension fund and wanted to raise cash to make investments in Egypt. These were the reasons for the transaction. However, despite this, HMRC's argued that Dr Allam could have structured the transaction in a way in which he would have received cash and paid income tax on it and so he must be taken to have had as one of his main purposes the obtaining of an income tax advantage. They suggested that the transaction could have been undertaken as a share exchange followed by a dividend.

Dr Allam appealed, arguing that obtaining an IT advantage was not a main purpose of the transaction and so the transactions in securities rules did not apply. The sale of shares to AML was the simpler transaction to do. That transaction would have provided him with the cash fund that he required for his retirement. The natural transaction to undertake with the company was to sell the shares in ADL to AML for cash.

The final part of this case concerned the remittance basis. Dr Allam was resident but not domiciled and was entitled to use the remittance basis. Previously Dr Allam had loaned nearly £7 million generated from income and gains made abroad to Allamhouse, claiming 'business investment relief' (s809VA ITA 2007) so that the remittance basis did not apply at the time. This relief is available if funds are used to make a "qualifying investment" or are remitted to the UK and used to make a "qualifying investment" within a 45-day period. Where funds are used to make a "qualifying investment", they are treated as not having been remitted to the UK. Subsequently, Allamhouse had made payments totalling £2.9 million to Dr Allam that HMRC argued were loan repayments and so funds being remitted as income/ gains to the UK. They sought additional income tax of £1,305,000.

Dr Allam appealed all three amounts

### *Decision*

The First Tier Tribunal concluded that the legislation contained no numerical threshold or that non-trading activities should predominate. They stated that 'to a substantial' extent should be given its 'ordinary and natural meaning' in the context of the company's activities as a whole. Having considered ADL's activities, the Tribunal found that ADL's rental income and related asset base showed that its property investment and rental activities were substantial and that entrepreneurs' relief was denied.

When considering the second issue, the First tier Tribunal said that:

'an individual obtains an income tax advantage where he or she receives consideration on which he or she pays capital gains tax and that amount of tax is less than the income tax which he or she would have paid if he or she had received the consideration as an income distribution.'

Dr Allam was successful in his appeal as his aim was to unite ADL and AML under common corporate ownership to support the bank financing of a property development and the desire to create a cash fund for his retirement. The Tribunal stated that these :

'reasons are either "commercial" or "personal" reasons, to adopt the terminology used by HMRC, but the crucial point is that they are not the purpose of obtaining an income tax advantage.'

The First Tier Tribunal found that the payments made by Allamhouse resulted in the withdrawal of business investment relief. If Dr Allam wanted these payments to be treated as an investment going forward, he needed to demonstrate his intention to reinvest the proceeds in the company. He did not do this and so the payments received by Dr Allam should be treated as remitted to the UK and included in his taxable income. However, Dr Allam was entitled to relief from double taxation in respect of Egyptian tax paid on the amounts treated as having been remitted from abroad.

Assem Allam v HMRC (TC07532)

*Adapted from Tax Journal (7 February 2020)*

## Is entrepreneurs' relief here to stay?

Over the years we have seen a number of reliefs for business related disposals come and go, only to be replaced by something else. First there was retirement relief, followed by taper relief and currently entrepreneurs' relief. Are things about to change again? You may have read in the Conservative Party manifesto that the government plans to review and reform entrepreneurs' relief as the government said that they recognise that it has not fully delivered on its objectives. With Boris Johnson re-elected, does this mean that there will be an announcement on Budget day of the proposed review?

Remember, under entrepreneurs' relief, qualifying individuals are entitled to claim relief on up to £10 million of gains on the disposal of qualifying business assets and shares, meaning that they are only taxed at a rate of 10%. Is it right that this lower rate of tax should apply at a point when an individual is ceasing to be an entrepreneur? The answer depends on what was, and going forward, what is the aim of the relief. Alastair Darling originally said that the relief was intended to 'encourage small business to expand' and help people who have reached retirement'. The relief is expensive, costing £2.2bn in 2018/19 but does it achieve its aims?

In an article in Taxation (30 January 2020) members of the tax world were asked what they would recommend doing with entrepreneurs' relief. Suggestions included:

- introducing an upfront incentive in some way:
  - lower rate of tax for entrepreneurs' in their first few years
  - allowing unused personal allowances to be carried forward where losses arise;
  - incentives or tax holiday where a business employs a minimum number of people or locates to areas of low employment;
- An incentive to encourage businesses to reinvest retained profits rather than holding them as liquid assets/cash;
- Seeing entrepreneurs' relief reinvented as a form of rollover relief, with relevant gains sheltered to the extent that proceeds were reinvested in a further qualifying business within a defined period of time;
- Increasing and or introducing a variable holding period so that greater entrepreneurs' relief is available for those that have been 'entrepreneurs' for longer;
- Introduction of tighter qualifying tests to ensure the real entrepreneur workers benefit from the relief (increase in the 5% shareholding test, inserting a minimum working hours per week test and an extension of the ownership period);
- focus relief on individuals selling trading businesses either unincorporated or through a company and deny the relief where assets are held outside of the business.

In summary, some would argue that the relief does little to encourage entrepreneurial activity and business investment. Relief at the end of the business life cycle provides a useful way for businesses owners to plan for their retirement but does nothing to initiate entrepreneurial activity. Presumably we will hear more on the matter in the next Budget.

## **SDLT on a garage office and paddocks**

*Summary – The property including the garage office, stables and paddocks were a correctly treated as residential property for SDLT purposes.*

Craig and Julie Goodfellow bought a property in Hampshire, described in the land agent's particulars as a family home set in 4.5 acres with six bedrooms, gardens, swimming pool, garaging, stable yard and paddocks. They paid SDLT of £126,750 on the basis that it was residential property.

Nearly a year and a half later, they submitted a claim for a refund of £48,500 on the basis that the property had been misclassified and was in fact mixed use property. They argued that the space above the garage was used as an office for Craig Goodfellow's business and that the stable yard and paddocks were used by a third party for grazing horses. The paddocks were undeveloped land and were by definition non-residential. Hence the property was mixed use.

HMRC submitted that the detached garage, stable yard and paddocks formed part of the grounds of the residential property and were correctly classified as residential. They denied the refund.

The Goodfellow's appealed.

### *Decision*

The Estate agent's particulars were the fullest description of the property that the Tribunal had and did not help the Goodfellow's case. The property was described as an equestrian property but with no reference to any current commercial activity or the prospect of future development being possible. There was no suggestion that the property was anything other than a country residence. That was clearly also the view of the Goodfellow's solicitors who acted on the purchase, as the SDLT return was made on the basis that the whole of the property was residential.

The tribunal found that the room above the garage was wholly residential. It could readily be used as a guest suite, play room, or a games room for teenagers. There was no evidence that it had ever been let out or was separately rated for office use. Craig Goodfellow was simply working from home, so that he did not have to make the long journey to his company's headquarters in Essex.

The Tribunal found that the paddocks and stables formed part of the grounds of the property and were residential. Without the paddocks and stable yard, the house would cease to be an equestrian property. There was no evidence that any commercial arrangement had been made at any material time for the use of the paddocks. Only a peppercorn rent was paid. Equally, there was no evidence that any livery business had been in operation at the time of completion of the purchase, nor that they were sold subject to the rights of an existing occupier.



Applying s116 FA2003 that defines what a residential property is for SDLT purposes, the Tribunal concluded that the whole property including grounds, was a residential property.

*Dr Craig Goodfellow Mrs Julie Goodfellow v HMRC (TC07507)*