

Personal tax round up

(Lecture P1131 – 16.11 minutes)

Chauffer driven car

Summary – A car leased by a company and made available for private use was a taxable benefit, despite being driven exclusively by a mini cab driver.

Aegis Vision Limited was incorporated on 21 May 2004. Mr Agarwal is a shareholder and had been a director of the company since 2004. Mr and Mrs Agarwal lived approximately ten minutes away from the company's office by car but neither of them could drive. Mr Agarwal had never walked to the office; he had always required a driver to take him.

Mr Agarwal had known Mr Anwar in his capacity as a mini cab driver since 2004. In 2010 Aegis Vision Limited decided that they would engage Mr Anwar to be a chauffeur. In order to provide the efficiency and positive image required by Aegis Vision Limited, the company leased a Mercedes car and then entered into arrangements to sub-lease this car to the chauffeur on the following terms:

- When not being used, the car should be parked at Mr Agarwal's home address;
- Aegis required the chauffeur to use the Mercedes for assignments;
- Aegis insured the Mercedes for only the chauffeur to drive;
- The chauffeur had to drive from his home to Mr Agarwal's home and parked his car there while using the Mercedes;
- The chauffeur was required to pay a fee of £200 per month for using the car;
- Aegis refunded the chauffeur's petrol and car cleaning costs for the Mercedes;
- The chauffeur could provide a suitable alternative if he was not available to drive, but he would have to arrange appropriate insurance cover;
- The chauffeur may be engaged in another business, but the agreement did not refer to the use of the Mercedes for the purposes of that business;
- The Chauffeur agreement set out an hourly rate of £12 per hour and referred to monthly invoicing for the transport.

The Chauffeur told HMRC that the he would never use the Mercedes to transport private customers as the car was for the transportation of Mr and Mrs Agarwal but told them that he had used the Mercedes once or twice for appearances only.

Following HMRC's employer check HMRC issued assessments and penalty notices on the basis that the Mercedes was a company car available to Mr Agarwal for private use.

Decision

The First Tier Tribunal concluded that the Mercedes was made available for Aegis Vision Limited and the Agarwal's transportation assignments. Although the chauffeur held the keys and was the only insured driver, he drove his own car in his own mini cab business and he told HMRC that he did not use the Mercedes to transport fare-paying passengers.

It was Aegis Vision Limited that had entered into the lease for the Mercedes and Aegis Vision Limited remained in control of the use of the Mercedes. It was therefore Aegis that made it available to Mr and Mrs Agarwal by reason of the employment.

But was the car available for private use? S.118 ITEPA 2003 provides that a car made available in a tax year to an employee is to be treated as available for the employee's private use unless in that year the terms on which it is made available prohibit such use and it is not so used. The Tribunal concluded that the Mercedes was available for private use as Mr Agarwal conceded that the chauffeur used the car to drive him on non-business journeys and to his office a few times a month.

With Aegis Vision Limited paying the fuel costs of the car that was available for private use, the fuel charge also applied.

The First Tier Tribunal stated that the fact that Mr and Mrs Agarwal do not drive was not relevant because a charge under ITEPA 2003 applies where an asset is made available to an employee or their family. The Tribunal was not clear why HMRC did not pursue the additional tax charges that could be due on the benefit of the services of the chauffeur.

The appeal was dismissed.

Aegis Vision Limited and Mr Sanjay Agarwal v HMRC (TC07038)

Rental related penalties cancelled

Summary – The taxpayer had not been careless when failing to inform HMRC that she had been residing on her property when renovation and repair work was undertaken prior to letting the property.

Ms Negka lived with her family at a property at Perham Road, W14 between 24 July 2009 and 11 October 2009. On separating from her husband, she moved out of the property and rented it for a number of years before selling it on 22 May 2013.

On 12 July 2013 she bought a larger property at Hippodrome Mews, W11 and lived there with her son and mother between 12 July 2013 and 16 June 2014. They moved out around 16 June 2014 when it was rented out until 23 May 2015. Ms Negka claimed nearly £20,000 of expenses that she incurred in preparing Hippodrome Mews for rental against her rental income in her tax returns for 2013/14 and 2014/15.

Ms Negka sold Hippodrome Mews on 16 June 2015 having established with HMRC on 7 April 2016 that she was entitled to claim principal private residence (PPR) relief. This relief was later disallowed and then allowed again by HMRC in 2017. This relief is not the main subject of this appeal that focuses on the rental expense claims that were disallowed by discovery assessments.

On 18 June 2015 HMRC wrote to Ms Negka asking for a schedule of information including copies of invoices to support her £20,000 expenses claim. This information was provided promptly on 23 June 2015 together with an explanation that she had spoken to two technicians at HMRC about this claim in 2013 and 2014. HMRC confirmed on 24 November 2015 that they had managed to trace and listen to recordings made where Ms Negka had asked about costs incurred before a tenant moves in. In 2013 she was advised that the expenses would be tax deductible if they were incurred with the intention of letting out the property. In the second call in 2014 it was said that a claim for allowable expenses should be made in the year the expenses were incurred.

In September 2017, while looking into whether she was entitled to claim PPR relief, HMRC became aware that there was an error in relation to the expense claim. HMRC said that in the call made in September 2013 she failed to advise that she was actually residing in the property when the repairs and renewals were being completed. This invalidated her claim for expenses incurred prior to the property being let and the expense claimed of £19,778 was withdrawn. On 4 October 2017 HMRC issued s29(1) TMA discovery assessments and penalty assessments disallowing the rental expenses. HMRC claimed that the expenses were not incurred wholly and exclusively for the purposes of letting the property as Ms Negka was living in the property at the time. The expenditure was therefore for a domestic and private purpose and not allowable. As these expenses were not deductible in 2013/14 there was no rental loss to be carried forward and used against rental income in 2014/15, so that there was an insufficiency in the assessment. They argued that this situation arose because Ms Negka was careless and that she should have made clear that she was living in the property when she spoke to HMRC about claiming the rental expenses.

Decision

The Tribunal said that the only questions before this Tribunal were whether HMRC were permitted to issue the assessments under section 29 TMA relating to the rental expenses and whether the related penalties were due.

Ms Negka conceded that she had made a mistake when she claimed expenses for repairs that were incurred when she was living at the property as they had improved her home. The deduction of the expenses claimed in 2013/14 should be disallowed under S34 ITTOIA 2005 as they were “not incurred wholly and exclusively for the purposes of the trade”.

The Tribunal held that HMRC made a s.29(1) discovery relating to these expenses in the summer of 2017 when considering the PPR position on Hippodrome Mews. As the s.29(1) TMA assessments were issued a few months later in October 2017, the discovery had not become ‘stale’ but was it a valid discovery under s29(4) as submitted by HMRC that Ms Negka was careless?

The Tribunal said that the test to be applied was what a reasonable hypothetical taxpayer would do in such circumstances. It was incorrect to look at Ms Negka’s failure to mention that she was living in the property in isolation, but to consider all the circumstances:

- Calling and writing to HMRC to tell them that she was living at Hippodrome Mews between 12 July 2013 and 16 June 2014;
- Choosing to call for advice repeatedly as she was unsure about claiming expenses before a tenant moved in and she wanted to be sure her claim was correct;

- The call transcripts demonstrated that she was told that she could claim the rental expenses if the property was available to rent.

The Tribunal sided with Ms Negka, concluding that she did not fail to take reasonable care and that she took the steps of a prudent and reasonable taxpayer. She was not careless because she made a mistake that would have been avoided if she had used a tax adviser. She researched her tax obligations and took advice from HMRC to make sure that her rental expenses claims complied with the rules and the relevant information was provided to HMRC. Ms Negka made a mistake, but HMRC had not established that Ms Negka failed to take reasonable care. The condition in section 29(4) TMA was not met and the appeals against the section 29(1) assessments for 2013/14 and 2014/15 were allowed and the penalties were cancelled.

Panagiota Negka v HMRC (TC06966)

Earlier Year Update (EYU) process change

In the April 2019 Employer Bulletin, HMRC outline a trial that they are running aimed at simplifying the process for reporting corrections to previous year payroll data. Provided an employer's software supports this new function, from 20 April 2019 HMRC will accept a Real Time Information Full Payment Submission (FPS) with amended YTD information for the tax year ending 5 April 2019, which are identified after 19 April 2019.

If the trial is successful HMRC expect all payroll software providers will support the change from April 2020 so the EYU will no longer be a valid submission type for the 2019/2020 and later tax years. All amendments to payroll data for the year 2019/2020 and future years, identified after the year end, will need to be made on a FPS.

HMRC's Basic PAYE Tools software will also be amended in April 2020 to support the change to a FPS.

www.gov.uk/government/publications/employer-bulletin-april-2019

Employer Bulletin: EU Exit edition

HMRC has published a bulletin covering important information on a range of issues to be aware of should the UK leave the EU without a deal. This includes guidance on National Insurance Contributions (NICs) for UK and EU workers if the UK exits the EU without a deal.

UK employers with UK or Irish employees working in Ireland

Under the agreement with Ireland that was signed in February 2019, the NICs position of these employees will not change.

UK employers with employees working in the EU, European Economic Area or Switzerland, and UK self-employed people working in these countries

The current NICs arrangements will continue to apply until the end date stated on the employee's or self-employed person's UK-issued form A1/E101. The employer or self-employed person is required to contact the relevant EU social security institution to confirm the position in relation to foreign social security.

EU employers that send workers to the UK

The employees may not be required to pay NICs if specific conditions are met. These conditions have not yet been published.

EU citizens working in the UK

These taxpayers may not be required to pay NICs if they are employed mainly in EU countries and only carry out limited work in the UK. Specific conditions will apply, which have not yet been published.

<https://www.gov.uk/government/publications/employer-bulletin-eu-exit-edition>

Adapted from Tax Journal (12 April 2019)

PPR on land and carelessness

Summary – As the advisor had not been given a chance to defend their position as to whether or not they had been careless, the appeal was allowed and the assessments discharged.

In January 2007 Mr and Mrs Ritchie sold a plot of land of about 0.7 hectare on which was the house they had built, together with other buildings. Their tax returns for the year of disposal, which were prepared by their accountant, contained no reference to the sale and reported no chargeable gain.

In March 2013, HMRC raised discovery assessments on Mr and Mrs Ritchie on the basis that the gain which arose on the sale of the land was not wholly exempt under the principal private residence provisions of section 222ff TCGA 1992 as the land exceeded 0.5 hectare.

Mr and Mrs Ritchie appealed to the First Tier Tribunal against the assessments in March 2017. The Tribunal found that a larger part of the gain on the sale of the land was exempted under the PPR provisions than had been allowed by HMRC. The Tribunal agreed with HMRC that the couple's accountant had been careless making the assessments. The Tribunal reduced the chargeable gain significantly, but upheld the making of the assessment.

Mr and Mrs Ritchie argued that the First Tier Tribunal erred in its conclusion because HMRC had raised the issue of the accountant's carelessness too late to allow them time to defend the point. This was an error of law.

Decision

This Upper Tribunal's decision in this case related only to the carelessness issue. HMRC's appeal against the reduced PPR was not heard.

The Upper Tribunal said it had not been clear in HMRC's statement of case and skeleton argument to the First Tier Tribunal that HMRC were intending to argue that the assessment could be justified by the carelessness of the advisor. Consequently, the First Tier Tribunal had erred in law by concluding the issue had been adequately pleaded. The advisor had not been given an opportunity to explain their actions.

The Tribunal said that there was public interest in the correct tax being collected, but it was also important for litigation to be brought to a conclusion. The case had been going on for many years and so the Tribunal thought that it was now too late, and would be unfair, for the question of carelessness to be revived. Mr and Mrs Ritchie's appeal was allowed and the assessments discharged.

HMRC v William and Hazel Ritchie [2019] UKUT 0071 (TCC)

Payment under guarantee

Summary – Payment of £230,000 to Ulster Bank was an allowable capital loss in 2011/12, the year that the payment was actually made and could not be carried back.

MCE Developments Ltd was a company incorporated in Northern Ireland in February 2007 as a venture between Gerard Eccles, his wife and some others, with the aim of purchasing and developing a site on Belfast Road in Glenavy.

MCE Developments Ltd obtained planning permission, but was unable to proceed due to the slump in property prices. It is also said that the property crash took place in 2008 before development took place and the bank put a hold on the development loan.

The company received an overdraft facility and demand loan of £1.2m from Ulster Bank. The Terms and Conditions applicable to the overdraft and loan included that they were secured by a first legal charge on the development site, as well as "an unconditional guarantee from Gerry and Shirley Eccles, guaranteeing the Borrower's liabilities to the Bank - the sum of £230,000."

On 23 April 2009, £295,700 of personal money was placed into the Eccles' bank account at Ulster Bank. On 1 December 2010, Mr and Mrs Eccles placed £295,700 on deposit with Ulster Bank's Money Desk. This was money received from an insurance claim. The money was moved about within Ulster Bank - between the Eccles' current account, corporate current account and Money Desk deposit, and back again.

In March 2012, Mr Eccles, as guarantor, made a payment to Ulster Bank of £250,000. On 9 March 2012, Ulster Bank asked Mr Eccles to send in a signed letter saying:

"I authorise you to utilise the funds currently held on deposit by the Ulster Bank as follows:

1. The amount of £250,000 in full settlement of my personal guarantee on MCE Developments Ltd;"

Mr Eccles treated this as a loss arising from his personal guarantee given to the bank against the original loan to purchase the development site. He claimed relief for loans to traders under s253 TCGA 1992 for 2009/10 and 2010/11.

HMRC disallowed both claims. In their view the capital loss did not arise until that payment was made in March 2012. This fell within 2011/12 and could not be carried back to offset any capital gain liability for earlier years.

The taxpayer believed that the capital loss arose much earlier when the development ceased due to the property crash and so appealed.

Decision

The First-tier Tribunal accepted that Mr Eccles had made the payment under the guarantee satisfying s 253(4)(b) TCGA 1992. This was not disputed by HMRC. The issue was the timing of the payment.

S253 states that an allowable loss accrued to the claimant when the payment was made."

This made it clear to the Tribunal that s253 was in point only when the payment under the guarantee was made. The Tribunal concluded that HMRC was therefore correct that the loss had not arisen until March 2012. Instructions were given to Ulster bank in March 2012 that they could draw the funds held on deposit and use them to clear the £250,000 personal guarantee (which in fact was £230,000) on MCE Developments Ltd. At this time, Mr Eccles clearly had control over the deposited money, because, if he had not, there would have been no need for the Bank to ask him to authorise anything. It was irrelevant that the bank could have called the guarantee sooner.

Mr Eccles' appeal was dismissed.

Gerard Arthur Eccles (TC06978)

Sale of surgeon's business

Summary – The surgeon had sold his business resulting in a capital gain that was eligible for entrepreneurs' relief.

Richard Villar is a world-renowned orthopaedic surgeon specialising in hip arthroscopic procedures. He sold the 'Richard Villar practice' to Spire Healthcare Diagnostics Limited for £1m. The sale involved the disposal of his right to earn any income from the practice and the transfer of all intellectual property including the database of former patients, website domain name and the business name, all of which belonged to Richard Villar. He agreed that he would not carry out any paid work in the UK as a consultant surgeon, unless through Spire Healthcare Diagnostics Limited, who engaged him on an ad hoc basis through his private services company, Vineyard Press Limited.

Richard Villar argued that he received the £1m payment as consideration for the sale of a business as a going concern and therefore it should be assessed to capital gains tax, with entrepreneurs' relief being available.

HMRC argued that the payment was in fact income in nature, being effectively an advance for services provided and so subject to income tax. Alternatively, if it was capital, it should be treated as income under s773(2) ITA 2007 as it was a payment to exploit a person's earning capacity and to avoid or reduce income tax.

Decision

The First Tier Tribunal stated that Richard Villar did not want to be locked into working for Spire Healthcare Diagnostics Limited. He intended the sale as part of his move towards retirement and planned to change the pattern of his life following it. However, he understood that it was usual for a key individual to remain involved in a business after its sale to ensure a smooth transition and he was prepared to do this in order to secure the sale.

The valuation included amounts for goodwill as well as contracts and records. At the time Richard Villar entered into the arrangements there was a real prospect that he might decide to volunteer in a disaster relief project or pursue his profession abroad and he was under no obligation to work for Spire Healthcare Diagnostics Limited. The Tribunal concluded that the parties had entered into arrangements to sell Richard Villar's business.

As for HMRC's second argument, this depended on the arrangements being entered into "to exploit the earning capacity of an individual in an occupation", or in this case, meaning the earning capacity of Richard Villar as an orthopaedic surgeon. With no obligation for him to continue to work as an orthopaedic surgeon, it was difficult to conclude that this pre-condition is met. Further, the arrangement was made so that Richard Villar could claim entrepreneurs' relief, but that did not demonstrate a desire to avoid tax.

The appeal was allowed.

Richard Villar v HMRC (TC06983)

Reliance on a third party (Lecture P1131 – 16.11 minutes)

Summary – The taxpayer was forced to change accountants just before the 2011/12 filing deadline. Keeping HMRC informed of what was happening was a reasonable excuse for him submitting his return late.

Mr Coll is a director and shareholder of a company in the restaurant business. He engaged a firm of accountants to do his company's book-keeping, accounts and various tax returns including Mr Coll's personal income tax return.

The accountancy firm maintained the company's books and prepared the various tax returns (including Mr Coll's personal tax return) for two years without any serious problems. In December 2012 or January 2013 (Mr Coll could not remember the precise date – but it was shortly before the filing date for his 2011/2012 personal tax return), Mr Coll had a meeting with his accountants. It transpired that there were material errors in the accounting records that had been prepared and additional work would need to be done to correct records. In order to prepare his personal tax returns, the company's accounts had to be finalised first.

In early February 2013, Mr Coll appointed Elisabeth Sims (a sole practitioner) to replace his former accountants. It took many calls to the old firm and many months before they would transfer their files to Ms Sims. Once Ms Sims had received the files it took her about a month to reconstruct the company's accounts, and prepare Mr Coll's tax return. His return was eventually filed electronically on 31 July 2013.

Mr Coll had telephoned the HMRC helpline in early February to inform them that his personal tax return would be filed late, and explained why. He made other calls to the helpdesk to keep them informed of progress on the finalisation of his tax return.

HMRC imposed penalties against which Mr Coll appealed, saying he had a reasonable excuse. He believed that he had done everything 'humanely possibly' to address the issue.

Decision

The First-tier Tribunal agreed that Mr Coll had a reasonable excuse. From the evidence presented, he had no reason to suspect there was a problem with his accountants until a meeting just before the filing date. He rectified the situation by appointing a new accountant and kept HMRC informed of his progress..

Mr Coll's appeal was allowed.

Ian Coll v HMRC (TC06971)