

Business tax round up (Lecture B1191 – 17.10 minutes)

Filing extension at Companies House

From 25 March 2020, provided their filing deadline has not been passed, companies will be able to apply for an automatic 3-month extension for filing their accounts.

In their Press Release, Companies House claims that applications can be made through a fast-tracked online system that should take just 15 minutes to complete.

Companies that do not apply for this extension but then file their accounts late will have an automatic penalty imposed. They say that the registrar has very limited discretion to not collect a penalty. Each COVID-19 appeal will be treated on a case-by-case basis, using policies already in place to deal with appeals based upon unforeseen poor health.

Companies House say that companies that have already extended their filing deadline, or shortened their accounting reference period, may not be eligible for this extension.

The government is consulting with company representative bodies, legal practitioners and others, to look at solutions for the impact COVID-19 may have on companies' ability to hold Annual General Meetings. Updated guidance should be published in due course.

<https://www.gov.uk/guidance/coronavirus-guidance-for-companies-house-customers-employees-and-suppliers>

Making Tax Digital (MTD) for income tax

The current plan is still to make MTD for income tax compulsory for the self-employed and landlords but not before April 2021.

On 19th March 2020 HMRC released further guidance about MTD for income tax that is currently optional for those that are eligible to sign up on a voluntary basis.

At the moment, a limited number of taxpayers can sign up on a voluntary basis but only if they are:

- UK resident;
- registered for Self Assessment and both returns and payments are up to date;
- a sole trader with income from one business only, landlord who rents out UK property; or both.

However, if these individuals have income from any other source or claim tax relief on any payments, they are currently ineligible to join.

Compatible software

Taxpayers will need to keep digital records of all their business income and expenses from the start of the accounting period for which they sign up. Obviously it is important that the software that is used is compatible with Making Tax Digital for Income Tax and so it will need to be authorised online, as part of the sign up process.

Signing up

Taxpayers sign up online and so will need a Government Gateway user ID and password and can choose to sign up for either their current or next accounting period.

To do so, they will need their:

- business name
- email address
- National Insurance number
- Unique Tax Reference number
- accounting period
- accounting type such as cash basis or accruals
- This should be checked before signing up

Submitting information to HMRC

The software will prompt taxpayers to send business income and expense summaries every three months and Then at the end of the taxpayer's accounting period, rather than submitting Self Assessment tax return, they will need to finalise records for the year by making any accounting adjustments that are needed and then submitting a declaration to confirm that the updates sent are correct. This needs to be done by the normal 31 January deadline for Self Assessment returns.

Once done, taxpayers will be able to view the calculation of tax due both in their software and online at HMRC. This must be paid over to HMRC by 31 January the following tax year.

<https://www.gov.uk/guidance/follow-the-rules-for-making-tax-digital-for-income-tax>

MTD for VAT digital links

Remember, under MTD for VAT, there must be a digital link between software and/or spreadsheets; the data cannot be transferred manually between products.

Businesses were originally given a year from the launch of MTD to have these digital links in place, giving them until 1 April or 1 October 2020, depending on their original MTD start date.

HMRC has now announced that they have delayed the requirements for businesses to have 'digital links' within their recordkeeping by a year. In order to ease the burden during the Coronavirus pandemic, businesses now have until the first VAT return period starting on or after 1 April 2021 to implement these links.

Loan repayments versus undeclared income

Summary – A lack of audit trail and an inconsistent story resulted in nearly £28,000 of bank receipts being taxable as undeclared consultancy income, rather than loan repayments as claimed.

Mubin Merchant submitted his 2015/16 tax return on 6 October 2016. HMRC opened an enquiry into that return on 27 March 2017 and later, on 4 July 2018, issued a closure notice maintaining that Mubin Merchant had understated his income for 2015/16 and that an additional amount of £11,624.25 of income tax in respect of the tax year was payable.

HMRC argued that receipts totalling £27,855, appearing as credits on his bank statements, were undeclared income arising from his consultancy work.

Mubin Merchant has appealed on the grounds that he had:

- only earned one-off consultancy fees of £4,070 as shown in his tax return together with an additional £1400 which had been carelessly omitted from that return;
- lent £40,045.70 to two companies and/or directors or shareholders of those companies and the credits of £27,855 shown in his bank statements were in fact repayments of the loans.

HMRC stated that Mubin Merchant's defence was inconsistent. At times he claimed that he was self-employed but later claimed that he was not; payments described as self-employed income were later described as loan repayment. Further, he lacked any records relating to the payments made to him to keep track of what was income and what was loan repayment.

Decision

Then First Tier Tribunal agreed that Mubin Merchant had been unable to provide any reliable evidence to support his claim that the amounts paid to him through his bank account were repayments of loans, or amounts of fees, or other income. Even at the hearing, the spreadsheet purporting to support his claim was still incorrect, more than two years after the HMRC enquiry started.

Had there been a clear audit trail shown using bank statements or otherwise, with which the taxpayer's evidence was consistent, a lack of formal documentary evidence would not have been not determinative. However, there was no clear audit trail and Mubin Merchant's evidence was far from consistent. The Tribunal did not accept that he had demonstrated that £27,855 shown as credits in his bank statements were not part of his taxable income.

The appeal was dismissed.

Mubin Merchant v HMRC (TC07627)

Gambling, not trading

Summary – With no evidence to support any trading activity and witnesses who confirmed his gambling activity and lifestyle, the taxpayer was held not to be trading.

Simon McMillan had not filed a tax return for any of the tax years 2006/07 to 2013/14, nor had he received notice to file a return. HMRC issued discovery assessments to Simon McMillan and charged interest for these tax years totalling £291,000. They argued that the frequency and regular nature of deposits into his bank accounts suggested he had been trading and that this money was taxable trading income. He produced no evidence to support his claim that he was a successful gambler and his claim of consistently beating the bookmakers was improbable.

Simon McMillan stated that the money was gambling winnings and so not taxable. His last declared income was around 1998 but since then he had not been employed or self-employed but instead lived off gambling winnings. He used an elaborate system of betting on British and European football results and high stakes private poker games, all for cash that he kept in a safe.

By 2010, he decided that his unhealthy lifestyle could no longer continue and he spent the next two years rearranging his life, supported by his partner. He gradually drew his accumulated funds from his safe and distributed the money into the various bank accounts that he had opened. The sums he paid in were based on what could be deposited easily on a single occasion via £20 banknotes into automated bank machines. He then purchased and restored a house. He had disposed of whatever records that he had at that time.

Most of the witnesses had seen Simon McMillan enter betting shops and one witness had hosted poker parties at his home where Simon McMillan usually won handsomely.

Decision

The First Tier Tribunal stated that as no trade had been identified by HMRC prior to the hearing, nor in any of the evidence that was presented at the hearing, the Tribunal could not infer that a trade was being run. Indeed that was the point made by the reviewing officer in an (unsent) letter dated 11 April 2018. At most, there was circumstantial evidence in the form of substantial bank deposits that invited further enquiry and explanation.

Although Simon McMillan was unable to produce any records relating to his gambling activity, he consistently denied that he had any other income. He made every effort to assist the tribunal and the judge had no reason to doubt his word.

The appeal was allowed.

Simon James McMillan v HMRC (TC07595)

Subsistence and training claim

Summary – Claims for training and subsistence were disallowed as the taxpayer had been careless in both the lack of records kept and relying on 'Baggy', an unknown agent.

Neil Phillips was a foreman bricklayer. His appeal was against a closure notice issued by HMRC in respect of the income tax year 2016/2017 and related to two items.

1. He attended a course and claimed a deduction for the course expenses in his 2016/17 tax return. He claimed that the course updated his bricklaying knowledge base with contemporary practices and regulations and so related directly to his work as a foreman bricklayer;
2. He claimed £1250 in respect of subsistence. The amount claimed was £5 per day but there were no receipts or invoices to support the claim or other evidence supplied to indicate what it related to.

In addition, Neil Phillips also appealed against two penalties for:

1. Failure to comply with an information notice;
2. Careless inaccuracies in his self-assessment tax return for the tax year 2016/17.

On 7 October 2017 Neil Phillip's then agent wrote to HMRC saying that his firm had no involvement in the submission of Neil Phillip's 2016/17 tax return but gave an explanation for what had happened. Bizarrely, Neil Phillips was approached by 'Baggy', a person recommended to him, who proceeded to register himself as Mr Phillips' Tax Agent online with Mr Philips' agreement. However he then submitted a Tax Return for Neil Phillips but without obtaining any information from him about his income or expenses. Neil Phillips claimed that the first time that he became aware that a return had been submitted on his behalf was when he received HMRC's initial letter, in May 2017. He claimed that he could not have foreseen that 'Baggy' would falsify a Tax Return.

Unsurprisingly, 'Baggy' was untraceable and no details were given concerning the person who recommended "Baggy" to Neil Phillips.

This all seems rather strange, not least because the return included information that only Neil Phillips could have supplied. What did the Tribunal think?

Decision

The First Tier Tribunal concluded that Neil Phillips had failed to provide all of the information required by the Information Notice.

The Tribunal stated that expenditure incurred on a training course, which provided training on an activity which would represent an organic growth in the trade, should in principle be allowable unless it was otherwise clearly capital expenditure. However, the Tribunal received no documentary material concerning the contents of the course. With insufficient evidence to show that he had incurred expenditure on a relevant course, the expenditure was disallowed.

Under section 12B TMA 1970, a taxpayer must keep business records to support entries in their tax return. The Tribunal concluded that Neil Phillips had failed to keep these records. With no supporting evidence, his subsistence claim was disallowed.

The First Tier Tribunal was in no doubt that Neil Phillips was foolish in selecting "Baggy" and careless in doing so. They went further and questioned whether 'Baggy' ever existed. Could he really have 'conjured these figures out of the air and accidentally hit upon the correct amounts seems most improbable'.

The Tribunal concluded that the claims were careless as, not only did they have doubts over whether 'Baggy' existed, but also Neil Phillips was unable to provide or retain evidence of the expenditure allegedly incurred. There was no reasonable excuse for this inaccuracy. They saw no reason to interfere with the penalty calculation.

Neil Phillips v HMRC (TC07630)

Occupational health

Summary – Where services were delivered for a fixed price from an onsite or mobile clinic, this was a single, exempt supply. However, where services were supplied on a bespoke basis, these were predominantly exempt supplies with a few exceptions being standard rated.

RPS Health In Business Limited and RPS Consulting Services Limited, referred to jointly as RPS, provided a variety of occupational health services to clients, including medicals, health surveillance, vaccinations, sickness absence management and drug/alcohol testing.

Following a presentation by KPMG, acting for RPS, HMRC accepted that RPS was providing a single indivisible economic supply of services, made up of two or more elements which were so closely linked that it would be artificial to split them.

Both parties were therefore of the view that there was a single supply. However, they disagreed as to its classification:

- HMRC argued that that services were exempt medical supplies (Sch 9, Group 7, Item 1, VATA 1994), being “services consisting in the provision of medical care”.
- RPS argued that they were making standard rated supplies of information and advice to employers.

Both parties accepted that some services fell either side of the line:

- HMRC accepted that pre-employment medicals, pension scheme medicals, ergonomic assessments, laboratory services and administration charges were all standard rated;
- RPS accepted that executive medicals were exempt.

Despite this, the parties jointly submitted that the First Tier Tribunal could not consider the single/multiple supply question and asked the Tribunal for a decision on whether the overarching supply was exempt or standard rated.

Decision

The Tribunal disagreed with the parties request, finding that a tribunal could not decide an appeal on a basis that it considered to be wrong in law, and so were able to consider and decide whether RPS was making separate single supplies, or a multiple supply. Considering each of the single supplies in turn was a complex process, resulting in an extensive case summary running to over 90 pages.

In summary the First tier Tribunal substantially agreed with HMRC deciding that:

- where RPS provided an occupational health practitioner to deliver a range of services for a fixed price from an onsite or mobile clinic, this was a single indivisible economic supply of exempt services, being made up of elements which are so closely linked that it would be artificial to split them;
- otherwise, RPS provided separate single supplies on a bespoke basis, vast majority of which were exempt. Ill-health retirement medicals, medico-legal services, administration charges and training courses were standard rated.

RPS Health In Business Limited and RPS Consulting Services Limited v HMRC (TC07643)

Action Day Planner no longer a book

Summary – The Active Day Planner was held not to be a book as its main function was to be written in rather than read. The First Tier Tribunal’s analogy between the planner and a book of crossword puzzles or a GCSE revision guide could shed no light on whether, applying the statutory provisions, the planner was a “book.”

Thorsteinn Gardarsson operated his business from Iceland selling his Action Day Planner in the UK via Amazon. He began selling his product into the UK on 26 July 2013.

He argued that his planner was a zero rated book, and not a standard rated. He marketed it as a time management tool developed to teach and instruct people time management skills. The first 16 pages of the planner contained text setting out a narrative of the ethos for effective time management. The remainder of the planner was taken up with 52 double page planners.

HMRC believed that these supplies were standard-rated, suggesting that he should be registered for VAT in the UK. Maintaining that his planner was a zero-rated book, he nevertheless applied for voluntary registration and was initially registered with effect from 1 July 2017.

Still believing that the planner was not a book and should be standard rated, HMRC believed that he should have been VAT registered in the UK from when he started trading and so they issued an assessment for the long first prescribed accounting period 26 July 2013 to 30 June 2017 (when he actually registered) for the sum of £158,024.77. A late notification penalty of £33,000 and an inaccuracy penalty of £2,000 were issued.

The First Tier Tribunal concluded the planner was a zero rated book on the basis that:

- the case *Colour Offset Ltd [1995] STC 85* was binding on their decision. That case concerned the interpretation of the word “books” for VAT purposes and concluded that the ordinary meaning of the word ‘books’ should be used;
- within that ordinary meaning was any item with the physical characteristic of a book (i.e. as a minimum covers, pages, text and/or illustration) which had as its main function informing/educating or recreational enjoyment;
- the Action Day Planner was similar in nature to the school books and other educational tests in question and answer format or someone completing a crossword puzzle, both items listed in HMRC’s Notice 701/10 as qualifying as books.

The Tribunal went on to consider the issue of registration stating that where a non-established person meets conditions A – D as set out in Schedule 1A VATA 1994, there is a liability to be registered for VAT with no turnover threshold unless, at the request of that person, HMRC consider it fit to exempt that person from the liability to be registered. On that basis, and with no request for exemption from registration, the correct VAT registration date was 26 July 2013. They concluded by stating that failure to register as required under Schedule 1A strictly makes the taxpayer liable to a penalty for failure to comply with an obligation specified in Schedule 41 Finance Act 2008. However, the penalty payable was a tax-geared penalty and, with no tax due, the penalty in this case was therefore nil.

HMRC appealed to the Upper Tribunal arguing that the First Tier Tribunal failed to correctly analyse or apply the decision of the High Court in *Colour Offset*.

Decision

The Upper Tribunal referred back to *Colour Offset* that the First Tier Tribunal had previously stated was binding on their decision. This case concerned a “conventional pocket diary” with spaces for recording events, tasks and engagements as well as pages with additional diary-like information to refer to. The judge concluded that the zero rating legislation’s intention was to avoid tax on reading, not on stationery. The Upper Tribunal concluded that even if *Colour Offset* did not state expressly how an item that can both be read and written in should be classified, some sort of “tie breaker” was needed and stated that general principles of VAT law would require the classification to be determined by reference to the “main function” of the item.

The Upper Tribunal concluded that the First Tier Tribunal had erred in law by focussing on VAT Notice 701/10. HMRC practice does not have the force of law and so no conclusion of law could be drawn from the fact that HMRC’s practice is to treat supplies of crossword books or exam study guides as zero-rated. The First Tier Tribunal did not apply the “main function” test articulated in *Colour Offset*. *Colour Offset* does not refer at all to whether the main function of an item is to inform or educate; nor does it refer to recreational enjoyment; there is no mention of crossword books or exam study guides at all.

The Upper Tribunal went on to concluded that the main function of the Action Day Planner was for it to be written in, rather than read, making it a standard rated supply. The 52 double pages of space for writing were much more significant than the text for reading. Additionally, they stated that a calendar tended to suggest that the main function of the planner was to hold written entries relating to a particular year, to be replaced annually for the next year. The planner was not a zero rated book under Item 1 of Group 3 of Schedule 8 VATA 1984.

Having made their decision, the Upper Tribunal have referred the case back to the First Tier Tribunal saying that, it may now be necessary to consider the quantum of the assessments, whether Mr Gardarsson had a “reasonable excuse” for failing to notify his registrability to HMRC, whether the inaccuracy in his return for 08/17 was due to “carelessness” and whether the various penalties and assessments were made in time. The Tribunal stated that they had not been referred to any relevant evidence on these matters and so were in no position to make findings themselves. The Upper Tribunal referred the appeals back to a differently constituted First Tier Tribunal, who must determine those appeals on the footing that the Action Day Planner is not a “book”.