

## **Personal tax update (Lecture P1371 – 16.04 minutes)**

### **Invalid furlough claim**

*Summary – With the employee not included on the payroll, the company had to repay the Coronavirus Job Retention Scheme grant claimed in error.*

Luca Delivery Limited made claims under the Coronavirus Job Retention Scheme (CJRS) for its director, his wife and an employee.

The employee had been working and paid by the company since December 2019, but she was not included on the RTI returns until June 2020.

One of the conditions for receipt of the CJRS grant was that the employee must have been included on the Real Time Information return which had been submitted to HMRC immediately preceding lockdown, so by 28 February 2020 or by 19 March 2020.

This not being the case, HMRC issued assessments to recover CJRS payments of £4,789.35 made to the employee for the period from 1 May 2020 to 31 October 2020.

The accountants had informed HMRC that it intended to correct the earlier RTI returns to include the employee from the date her employment began but this had not happened.

The company appealed arguing that their accountants, SJPR Accountants Ltd, had been responsible for running the company's payroll and had failed to add the employee when instructed.

#### *Decision*

The First Tier Tribunal found that the failure to include the employee on the payroll from December 2019 had been caused by the accountant's oversight.

However, on a strict interpretation of the legislation, the company had not included the employee in the appropriate RTI returns and the appeal was dismissed.

Even if the accountants had corrected the RTI returns, this would not have changed the CJRS position as the employee had not been included in a return filed on or before 28 February 2020 and/or 19 March 2020. The First Tier Tribunal stated that "Retrospective correction of an oversight or other omission does not change the CJRS position."

The First Tier Tribunal stated that the company might have a claim against its accountants but that it did not have the jurisdiction to decide such issues.

*Luca Delivery Limited v HMRC (TC08752)*

### **Director's loan write off**

*Summary – When a company was placed into creditors' voluntary liquidation, the effective date of the directors' loan write off was the date of the settlement agreement.*

Simon and Debra England were directors and participators of Alexander Lauren Associates Limited. The company provided car finance to the motor trade via the internet.

On 26 September 2012, the company was placed into creditors' voluntary liquidation. At that time the directors had a balance on the Directors' Loan Account of £1,009,063.

A settlement agreement was entered into on 28 October 2013, whereby provided the directors settled £100,000 over the next two years, the remaining £909,063 would be released. If the repayment terms were not met, the full balance would become payable immediately.

The directors believed that the write off was taxable over two years and so no entries were included on their 2013/14 tax returns.

HMRC disagreed, stating the full amount released was taxable in 2013/14, when the settlement agreement was signed.

The directors appealed.

### *Decision*

The First Tier Tribunal analysed the settlement agreement in detail and noted that the agreement stated that:

The £100,000 payment over two years represented the "full and final settlement" of the balance due;

Clause 4, which was headed "Release", confirmed that the Liquidator "was positively obliged to release/write off the £909,063.00" at the time of the agreement.

The Tribunal concluded that in substance the transaction was one of release and write-off of the £909,063 at the time of the agreement. It was binding at that date.

The appeal was dismissed.

*Simon and Debra England v HMRC (TC08770)*

## **Supply of workers**

*Summary – An employment agency was not liable for PAYE and national insurance on worker's wages paid under a time to pay arrangement.*

This case concerned a number of issues. The one that we are looking at here was whether the employment agency was liable to pay the PAYE and National insurance due when its client went into administration.

Prisma Recruitment Ltd sourced workers for a consultancy company, BGM Group Ltd.

BGM Group Ltd used the workers' services to fulfil consultancy work in the financial services sector for clients such as Royal Bank of Scotland and Barclays.

Prisma Recruitment Limited accounted for PAYE and national insurance on the workers' wages and recharged the cost to BGM Group Ltd, with commission. However, Prisma Recruitment Ltd and BGM Group Ltd considered that the workers were employees of BGM Group Ltd, not Prisma Recruitment Ltd, with the agency acting as introducer, not hirer.

BGM Group Ltd charged the banks a consultancy fee. It did not directly recharge the workers' wages.

BGM Group Ltd then went into administration and HMRC approached Prisma Recruitment Ltd to pay outstanding PAYE and national insurance liabilities for the workers.

Prisma Recruitment Ltd reconsidered the arrangement with the BGM Group, and on reflection, considered that it was not liable to pay outstanding PAYE and national insurance liabilities under the agency worker provisions of Chapter 7 ITEPA 2003. The supply was of 'excluded services' under s.47(2)(b) ITEPA 2003. These services include those provided wholly in the worker's own home, or at other premises which are neither controlled nor managed by the client. Viewing the supply chain with the BGM Group, the workers supplied their service either from home, or at the banks' premises. These were neither controlled nor managed by Prisma Recruitment Ltd's client, the BGM Group.

HMRC took the view that the banks were the client, and the workers' services could not therefore be excluded services as work was carried out at their premises.

#### *Decision*

The First Tier Tribunal found that the BGM Group was Prisma Recruitment Ltd's client, with no contract existing between Prisma Recruitment Ltd and the banks.

The banks, Prisma Recruitment Ltd and the BGM Group all viewed the workers as employees of the BGM Group.

The fact that Prisma Recruitment Ltd had accounted for PAYE and national insurance and entered into a time to pay agreement with HMRC for these amounts, did not change this analysis.

The appeal was allowed in relation to PAYE and NICs and directed the overpaid tax and NICs (which was allegedly paid by Prisma Recruitment Limited to dissuade HMRC from taking enforcement action) to be refunded.

*Prisma Recruitment Limited v HMRC (TC08762)*

*Adapted from Tax Journal (31 March 2023)*

#### **Ties had not been 'substantially loosened'**

*Summary – An Australian-born individual was UK resident in 2011/12 and part of 2012/13, meaning he was liable to pay in excess £1million CGT on the disposal of his UK properties.*

Darryn Lyons was born in Australia and moved to the UK in 1988, with the intention that one day he would return to Australia. To that end, he had bought several properties and built up an Australian business alongside his UK property and business transactions.

By 2010 he was starting to plan his return to Australia, finally moving there in October 2011, well before the start of 2012/13. He remained in Australia for much of the next six months but returned to the UK on 29 April 2012 for just over a month to make final arrangements in respect of his UK assets. After that, he visited the UK infrequently.

Darryn Lyons believed that:

- he could spend up to 45 days in the UK each tax year without becoming UK resident;
- he was resident in Australia by 2012.

HMRC disagreed and assessed him to CGT totalling in excess of £1million UK property gains made in 2012/13. This tax year preceded the introduction of the statutory residence test. Under the earlier rules, Darryn Lyons was UK resident as his UK ties had not been 'substantially loosened' before 6 April 2012.

Darryn Lyons appealed.

#### *Decision*

In deciding whether Darryn Lyons had 'substantially loosened' ties with the UK by the start of 2012, the First Tier Tribunal took into account his appearance on reality TV shows in both countries, as well as the fact that he ran businesses and owned properties in both countries. Further the Tribunal considered the timing of when he had shipped his pets and personal belongings to Australia as well as when his cars were shipped, gifted, or sold. Finally, the Tribunal considered when his UK bank account was closed and when he stopped paying council tax and being on the electoral register.

The First Tier Tribunal accepted that by 2011/12 Darryn Lyons had increased his ties with Australia. However, by April 2012, he had not passed the 'substantially loosened' test. He still had the majority of his belongings in his UK home and was both chairman and shareholder of his UK business. He continued to have UK bank accounts and mortgages and was registered with a UK doctor and dentist. He had UK health insurance, a UK life insurance policy, a UK mobile phone and was still on the UK electoral register. The First Tier Tribunal found that Darryn Lyons had done 'little more than develop a clearer intention to relocate and put the commercial properties on the market'.

The appeal was dismissed.

*Darryn Lyons v HMRC (TC08765)*

#### **Property for daughter's sole use**

*Summary – Despite a mother merely assisting her daughter to obtain a mortgage to be able to buy her new home, higher rate Land Transaction Tax was payable as the mother owned another home.*

Olivia Hayes wanted to buy a property to live in as her main residence but was only able to do so with the help of her mother, Lorraine Hayes, who was the borrower under the mortgage used to buy the Property.

Lorraine Hayes owned another property with her husband, in which she lived. She did not and has never lived in the new property.

The property was acquired for £136,000, with an effective date of 28 May 2021 and the property transfer form (TR1) and the land transaction return submitted to the Welsh Revenue Authority (WRA) showing that the transaction was a higher rates transaction and included Land Transaction Tax due of £5,440, which was paid.

However, on 2 July 2021 an amendment was made to the return to add the second buyer, Olivia Hayes, who had been inadvertently left off the first return.

A further amendment was made on 18 January 2022, to state that it was a normal residential transaction, without the application of the higher rates of Land Transaction Tax, reducing the amount payable to zero.

Following an enquiry by The Welsh Revenue Authority a closure notice was issued, amending the return to show that the higher residential rates applied and that therefore the original amount of Land Transaction Tax, £5,440, was due.

Lorraine Hayes appealed arguing that her involvement in the purchase and ownership of the property was simply a “paper exercise” to enable her daughter to buy the property. On her own, her daughter did not meet the affordability requirements to obtain the necessary mortgage and therefore the mortgage company required Lorraine Hayes to become a borrower on the mortgage as well. The intention was that as soon as her daughter’s affordability requirements improved, she would come off both the mortgage and the deeds of the property.

#### *Decision*

The Tribunal stated that Lorraine Hayes claimed that she did not have any beneficial interest in the property but did not have any documentary evidence to support that position.

The Tribunal found that the evidence that was available showed that Lorraine Hayes was the joint owner of the property at the Land Registry and that no specific arrangements had been shown that would alter the usual beneficial ownership consequences of that title.

Consequently, the Tribunal found that the transaction was a higher rates transaction in accordance with Land Transaction Tax Act 2017. It had no power to deviate from the legislation, under which the higher rates clearly applied.

*Mrs Lorraine Hayes v The Welsh Revenue Authority (TC08754)*

### **Power cables and mixed use**

*Summary - The existence of an electricity distribution network on in the grounds of a property did not render that property of mixed use for SDLT purposes.*

On 23 August 2019 James Faiers bought a property near Canterbury and paid Stamp Duty Land Tax (SDLT) on the basis that the property and grounds were entirely residential property.

In March 2020 he amended his return as he believed that the property had been misclassified and should have been classified as mixed/non-residential. He argued that the existence of a commercial electricity distribution network within the grounds and operated by Eastern Power Networks meant it was not solely residential property and so the lower rates of SDLT applied.

HMRC opened an enquiry into the amended return, later issuing a closure notice concluding that the property acquisition did not qualify as a mixed-use transaction.

James Faiers appealed.

#### *Decision*

The First Tier Tribunal acknowledged that the pole and cables:

- were clearly used for a separate, non-residential purpose, carrying electricity, which was a commercial operation and the pole and cables were on the land for a commercial purpose;
- limited activities like putting up a marquee or a trampoline and prevented trees being planted close to the cables.

However, the poles and cables did not stop him mowing beneath the equipment and, from the exhibited photographs, there is no difference in quality or appearance between the ground underneath the cables and the rest of the ground in that part of his land. Sheep could safely graze under the equipment and indeed, new trees had been planted and a large play fort erected close to the equipment.

The Tribunal concluded that while the cables placed limits on what James Faiers could do in that part of his land, they did not prevent the land looking like, or being used for ordinary day to day purposes in a similar way to, the surrounding area.

The Tribunal stated that the pole and cables could be described as “akin to a right of way, something which impinges on the owner's enjoyment of the grounds but does not in any realistic way make the affected land any less part of the grounds of the dwelling”.

The property was not mixed-use, and the appeal was dismissed.

*James Faiers v HMRC (TC08768)*

### **Agent not authorised**

*Summary – With the taxpayer having no knowledge that returns were submitted by his agent, HMRC's discovery assessments were invalid.*

Robert Robson worked offshore and was referred to Capital Allowances Consultants Ltd by a work colleague who thought that he might be entitled to a rebate.

On 29 September 2016 Capital Allowances Consultants Ltd advised that they had requested an authorisation code from HMRC, which Robert Robson forwarded to them following its receipt.

Rather than processing rebate claims, Capital Allowances Consultants Ltd proceeded to submit Self Assessment tax returns via the Agents Services Account as follows:

- 2015/16 return - generating an overpayment of tax of £8,250 repaid to the nominee named on the return, Cryoblast;
- 2016/17 return - generating a repayment of £16,513 to the named nominee on the return, ECO Cooling Solutions Ltd.

On 1 March 2019 HMRC wrote to Robert Robson regarding claims for Enterprise Investment Scheme relief contained in the returns. He confirmed that he had never made such investments and so discovery assessments were raised on 29 March 2019 and on 3 April 2019 to collect the monies due to HMRC.

Robert Robson appealed. He accepted that he was not eligible for EIS relief. However, he argued that he had no knowledge of the claims being made on his behalf and that the person alleged to be acting on his behalf was acting fraudulently.

### *Decision*

Having received rebates in the past, the First Tier Tribunal accepted Robert Robson's:

- explanation that “due to the erratic pay structure of his work and bonus payments he believed he was due a tax rebate and had received similar payments in the past”;

- evidence that he contacted Capital Allowances Consultants Ltd to seek assistance as he had always been PAYE and did not understand how to claim money owed.

The Tribunal did not find it unreasonable that Robert Robson had relied on what he believed to be “regulated accountancy advice in pursuing a rebate”. He had not acted carelessly.

The documentary evidence submitted supported Robert Robson’s claim that he believed that his agent was dealing with a tax rebate. By submitting tax returns that included EIS claims, Capital Allowances Consultants Ltd had acted fraudulently.

The First Tier Tribunal found that Robert Robson had not authorised Capital Allowances Consultants Ltd to submit Self Assessment returns or claim EIS relief.

As the company was not the taxpayer’s authorised agent, the return could not be deemed to have been submitted on his behalf.

The appeal was allowed.

*Robert Robson v HMRC (TC08746)*