

## **Personal tax round up**

**(Lecture P1221 – 12.24 minutes)**

### **CJRS and employment allowance**

*Secondary NIC < £4,000*

Previously, we reported that where an employer's 2020/21 secondary NIC liability is less than £4,000, and so covered by the Employment Allowance, employers should refrain from claiming this amount under the Coronavirus Job Retention Scheme. By adopting this approach, the employer obtains the full amount of Employment Allowance and does not risk making an incorrect Coronavirus Job Retention Scheme claim.

The ICAEW's Tax Faculty advise that where employers would benefit from claiming the Employment Allowance but have not done so, they should pay back the relevant NIC amount of the Coronavirus Job Retention Scheme grant and then tick the Employer Payment Summary to claim the Employment Allowance in the next payroll. This claim will recover the NIC for the year up to that point and then cover future NIC, up to the £4,000 limit, on an on going basis until the end of the tax year.

*Secondary NIC > £4,000 from August 2020*

As previously discussed, where an employer's secondary NIC for the year exceeds £4,000, they could consider deferring the claim for Employment Allowance to enable the employer to claim under the Coronavirus Job Retention Scheme. Provided that employers still have at least £4,000 of secondary NIC available to be relieved by Employment Allowance after claiming under the Coronavirus Job Retention Scheme, employers are permitted to claim under both schemes. To do this, the Employment Allowance claim must be delayed so that it applies to August 2020 onwards only, so ensuring that the Allowance is not claimed on secondary NICs covered by the Coronavirus Job Retention Scheme grants.

The ICAEW's Tax Faculty considers that where both the Employment Allowance and the NIC element of the Coronavirus Job Retention Scheme have been claimed but following this advice want to defer the Employment Allowance until August 2020, employers should not cancel their Employment Allowance claims already made, only to reinstate them later in the year. This is because most payroll software allocates Employment Allowance claims back to the start of the year, so before the claim was made. Either way, it will appear as if a double claim has been made.

The ICAEW believe that this should not be treated as a double claim provided that for the whole tax year an employer's total secondary NIC liability exceeds the £4,000 Employment Allowance plus the amount claimed under the Coronavirus Job Retention Scheme. The employer will not need to repay their Coronavirus Job Retention Scheme grant.

The ICAEW suggest that:

“Employers who want their EA claim to be for pay periods going forward from when their EA claim is made would have to either adjust their payroll software (probably impossible in most software as HMRC specified that EA claims are for a whole tax year and not just part of a tax year) or phone HMRC. See HMRC’s guidance Claiming EA: further employer guidance (updated 7 May) section 7 Claiming EA after the start of the tax year.”

#### *Secondary NIC from August 2020 < £4,000*

Readers have asked what is the position if the employer’s total secondary NIC liability from August 2020 to the end of 2020/21 is less than £4,000. In this situation, the software will again have automatically related back the Employment Allowance to the earlier months in 2020//21 when the Coronavirus Job Retention Scheme grant was claimed. Employers will need to check that the amount of Employment Allowance claimed plus Coronavirus Job Retention Scheme grants claimed for NIC do not exceed their total secondary NIC liability for the year. Where they do, the excess will need to be repaid either by reducing their:

- Employment Allowance claim by contacting HMRC via the employer helpline to restrict the value of their Employment Allowance claim; or
- claim for NIC under the Coronavirus Job Retention Scheme either in their next claim or by repaying the grant to HMRC.

<https://www.icaew.com/insights/tax-news/2020/oct-2020/cjrs-claimants-must-act-now-on-ea-and-nic>

### **Termination payments - no appealable decision**

*Summary – Redundancy payments were taxable when they were received and the taxpayer was liable for the income tax due. No appeal was allowed against the taxpayer’s own Self Assessment return.*

Laura Bell was employed by the NHS in 2009/10 and 2012/13 and was made redundant, receiving termination payments from the NHS in both years.

Following a reconciliation of her 2009/10 NHS end of year returns with the relevant PAYE records, HMRC determined that there was a £22,000 underpayment of tax relating to her gross income for that year, including the redundancy payment, of £180,000. The amount due was too large to collect through PAYE in the following year and so HMRC issued a tax return to Laura Bell on 11 August 2011. She filed her tax return for 2009/10 on 24 January 2014 confirming the £22,000 underpayment.

HMRC issued her 2012/13 return in April 2013 and this was received on 20 September 2013, showing an underpayment of £3,000.

Eventually, she arranged a time-to-pay agreement but did not comply with the terms. HMRC’s debt management pursued the taxpayer for the tax but she appealed, saying the underpayments arose because the employer failed to deduct the correct tax. HMRC said no appeal was possible against the taxpayer’s own Self Assessment returns. The appeal should be struck out in accordance with the Tribunal’s Rules.

## *Decision*

The First Tier Tribunal stated that the redundancy payments were taxable when they were received or made available to the employee (S403 ITEPA 2003) and that the person liable for the income tax was the taxpayer (S13 ITEPA 2003). It did not matter whether the employer had calculated the PAYE deductions incorrectly. Laura Bell received significant redundancy payments on which she did not suffer the correct amount of tax.

The Tribunal confirmed HMRC's view that the legislation does not provide a right of appeal against a taxpayer's own Self Assessment return. There was no appealable decision. The judge stated that a taxpayer is permitted to amend their tax return but this is 'only realistically ... made if the taxpayer paid the incorrect amount of tax, and this is simply not the case here'.

Laura Bell's only real defence was that she did not realise that the correct amount of tax had not been deducted under PAYE. This did not change the fact that the income tax under-deducted was still due.

The taxpayer's appeal was struck out.

*Laura Bell v HMRC (TC7820)*

## **Employment related securities - right to acquire shares**

*Summary - The right to acquire securities arose when options were granted, and restricted shares were acquired by reason of his employment. Both happened while the taxpayer was UK resident, making him liable to UK income tax on the gains made.*

John Charman was born in the UK and by 2001 was a senior executive in the insurance industry. In November 2001 he joined Axis Specialty Ltd and moved to Bermuda. At that time, he was granted options over 253,139 Axis Specialty shares due to vest in three equal tranches, on the first, second and third anniversaries of 20 November 2001 but these were conditional on him still being employed.

The following year, in September 2002, John Charman was awarded 50,000 restricted shares in the company. A few months later, as part of an initial public offering, the shares were exchanged for restricted shares in Axis Capital Holdings and his options became options over Axis Capital Holdings shares.

The restrictions on his Axis Capital Restricted Shares were lifted on 19 September 2005, when they were worth about \$11.5 million and in March 2008 John Charman exercised some share options and sold the shares, realising a profit of around \$33 million.

The First Tier Tribunal established that John Charman was UK resident until 21 November 2003, and so chargeable to tax on salary, expenses and bonuses received to that date.

There were two issues to deal with:

1. The timing of when John Charman acquired his options; and
2. Whether he had acquired his interest in the restricted shares 'as a director or employee' making him liable to income tax when the restrictions were lifted.

John Charman argued that he acquired the options when each tranche became exercisable rather than when the options were granted in 2001. The First Tier Tribunal agreed and concluded that John Charman became non-UK resident before the third tranche vested and so was liable to UK tax on exercise of the first two tranches only.

HMRC appealed, arguing that the right to acquire securities arose on grant of the options, and so all three tranches were subject to UK tax.

As for the restricted shares, the First Tier Tribunal found that John Charman had acquired these as a director or employee of the company, so they were subject to income tax. By contrast, John Charman argued that he had acquired them as a shareholder, as when they were exchanged all shareholders were granted shares in the new company, whether or not they were employees.

### *Decision*

S.477 ITEPA 2003 defines the meaning of “chargeable event” in relation to an employment-related securities option. One such chargeable event is the acquisition of securities pursuant to the option (S477(3)(a)).

The Upper Tribunal disagreed with the First Tier Tribunal and concluded that the terms of the option were such that the right to exercise was subject to a condition precedent, namely continued employment as defined in the documents, but the grant was not so subject. The Tribunal found that the contractual rights created by the option documents amounted to the creation of a 'right to acquire securities' at the date the options were granted. The First Tier Tribunal had erred in law and all three tranches were subject to UK tax.

On the second issue, the Upper Tribunal needed to establish whether John Charman's interest in the restricted Axis Capital shares was acquired in pursuance of a right or opportunity arising by reason of employment. The Tribunal concluded that the 'source' of the restricted shares was his employment. The Tribunal dismissed this appeal, agreeing with the First Tier Tribunal that the share exchange did not change the link between the acquisition of the shares and his employment.

John Charman lost his case.

*John Charman v HMRC [2020] UKUT 0253 (TCC)*

## **Compensation for mis-sold loan product**

*Summary – In this lead case, both types of compensation paid by Barclays Bank to a taxpayer were income in nature and so liable to income tax.*

Darren Wilkinson used bank borrowings to fund his UK property rental business, paying interest at a fixed amount above the Bank of England base rate.

In 2007, as a condition of a new loan, he took out an interest rate protection product that resulted in him paying substantial sums to Barclays Bank. The product was terminated in 2013 when it was discovered that the bank should have offered him a more beneficial product.

Barclays Bank paid compensation for the mis-selling of just over £466,000. This consisted of two elements:

1. Basic Redress Element: £385,000 being the difference between the interest payments Darren Wilkinson made, and those that he would have made under the better product; and
2. Interest Element: £81,000 being interest on the sum above calculated at a rate of 8% per annum, which was paid subject to the deduction of income tax at the basic rate.

Darren Wilkinson argued that the full £466,000 was a capital receipt. The sum represented his opportunity cost for not being able to undertake other investments due to entering into the mis-sold product.

By contrast, HMRC argued that the entire compensation amount was taxable as income:

- The Basic Redress Element was a receipt of Darren Wilkinson's UK property business and that it was therefore subject to income tax (Ss.268 and 269(1) ITTOIA 2005);
- The Interest Element was interest and therefore subject to income tax (S369 ITTOIA 2005).

### *Decision*

This case was a lead case in respect of a number of other appeals relating to similar facts.

The Tribunal needed to identify the reason why Barclays Bank had offered to pay, and did pay, the Basic Redress Element and the Interest Element:

The Basic Redress Element: The Tribunal concluded that this was paid in order to compensate Darren Wilkinson for the fact that, by entering into the mis-sold product, he had incurred more expenses than he would have done if that mis-selling had not occurred.

The Tribunal concluded:

“The Basic Redress Element was therefore a taxable revenue receipt of the Appellant's property rental business and was properly subject to income tax”

The Interest Element: This was intended to compensate the individual for the fact that they had been deprived of their money for a period of time as a result of making 'excessive' payments under the arrangement. The individual could choose to take that compensation at the 8% interest rate or submit a claim showing that their actual costs were greater than the compensation reflected in that interest rate. The Tribunal stated:

“Those additional expenses meant that the Appellant might either have had to borrow money to replace the money that he had expended or have missed out on a valuable opportunity to earn revenue from the money he had expended.”

They went on to say:

“..it is clear beyond any reasonable doubt that the Interest Element was “interest” properly so called and therefore that it was subject to income tax as such in the hands of the Appellant.”

With both Elements chargeable to income tax, the closure notice was correct and the appeal was dismissed

*Darren Wilkinson v HMRC (TC07840)*

### **No daily penalties for 2018/19**

Under normal circumstances, where tax returns are filed more than three months late, HMRC imposes a late filing penalty calculated as £10 per day for a maximum of 90 days.

Taxpayers who failed to file a return in May, June, or July 2020 could therefore incur a total penalty of £900. However, due to the difficult circumstances that many taxpayers have faced due to COVID-19, HMRC has stated that it will:

- accept COVID-19 as a reasonable excuse for missing return deadlines;
- not charge individuals or businesses daily penalties for late filing 2018/19 = returns.

However, the mandatory six- and 12-month penalties will continue to apply as normal.

*<https://tinyurl.com/y6cqunof>*

### **Self Assessment ‘Time to Pay’**

Individuals have been contacted by HMRC confirming the Chancellor’s announcement that:

- the online self-serve 'Time to Pay' service has been increased to £30,000 for Self Assessment customers; and
- once a taxpayer has completed their tax return for 2019/20 they can use this service through GOV.UK to set up a direct debit and pay any tax that is owed in monthly instalments, up to a 12-month period.

To use this facility taxpayers must have no:

- outstanding tax returns;
- other tax debts;
- other HMRC payments set up.

Additionally, it must be no more than 60 days since the tax was due for payment.

Taxpayers have been informed that, although the payments will be deferred under a 'Time to Pay' arrangement, they will have to pay interest on the tax paid late and this will run from 1 February 2021.