

Business Tax update (Lecture B1341 – 19.17 minutes)

Landscape gardener and landlord

Summary - A self-employed landscape gardener and landlord failed to provide sufficient information to displace tax assessments, suffering 60% penalties as a result.

Anthony Calcutt was a landscape gardener who had been self-employed since 2005.

On 3 October 2016, HMRC opened a section 9A enquiry under TMA into his 2014/15 Self-Assessment Tax Return.

On 15 November 2016, HMRC visited Anthony Calcutt at his home. During that meeting Anthony Calcutt confirmed that he believed his tax return to be complete and correct and that he had no rental income during the 2014/15 tax year. His only other source of income had been office work for which he was ultimately not paid since it had not worked out. He had received no loans in 2014/15 but he had re-mortgaged his property in November 2014.

Subsequently, HMRC queried various amounts that had been received in his bank account, which Anthony Calcutt later confirmed represented income from a short-term property rental.

Anthony Calcutt's supporting evidence regarding both his gardening business and property rental provided to be contradictory and misleading.

Following a review of bank statements, HMRC established that the property had been let out for three years and further concluded that he should have been VAT registered for at least 4 years

HMRC issued discovery assessments to reflect the discrepancies identified, which were back dated to previous years, under the presumption of continuity. Further, HMRC raised penalty notices reduced to 60% for telling, helping and giving.

Anthony Calcutt appealed both the assessments and related penalties.

Decision

The First Tier Tribunal found that:

- the discovery assessments were valid. Anthony Calcutt had inaccurate records. There were both false invoices and unrecorded cash;
- HMRC's analysis confirmed that similar errors were made in prior years and that adopting the presumption of continuity was appropriate.

Anthony Calcutt failed to produce any credible evidence to displace the presumption of continuity.

The Tribunal confirmed that the penalties were appropriate as the rental income had been deliberately hidden and he had provided HMRC with invoices that he knew were inaccurate. The fact that HMRC reduced the penalties by 60% for telling, helping and giving was generous.

Finally, the Tribunal concluded that Anthony Calcutt should have been VAT registered for the period 1 April 2011 to 31 July 2015. Although the VAT assessments which followed from this decision were not an appealable decision before this Tribunal because of the lack of returns, for Anthony Calcutt's benefit, the Tribunal confirmed that that it was made to best of judgment.

The appeal was dismissed.

Anthony Calcutt v HMRC (TC08582)

Deliberate suppression of purchases

Summary – Over a number of years the company deliberately suppressed purchases and related turnover, resulting in assessments for Corporation Tax, VAT and s.455 charges over a number of years

Bobby Khan Enterprises Ltd had four directors: Mohammed Asif Ali, Motia Begum and their two sons Mohammed Paris Khan and Mohammed Harrise Khan. The company ran four convenience shops.

On 22 November 2012, HMRC opened enquires into the company's corporation tax return for the accounting period to 31 January 2012 as well as Mr Ali and Mrs Begum's Self Assessment returns. From information received from the company's suppliers, HMRC became aware that a significant volume of purchases had not been declared.

HMRC:

- raised assessments for CT liabilities and VAT on the basis that Bobby Khan Enterprises Ltd had failed to declare all its purchases and related profits for its shops between 2010 and 2017;
- treated funds misappropriated as outstanding directors loan giving rise to s.455 charges for the company and Income Tax and NICs liabilities for the directors.
- Mr Ali and Mrs Begum were also assessed on undeclared rental income from the shop premises in 2010/11.

The company:

- blamed an ex-employee for making the purchases for his own business, without their knowledge;
- claimed that the missing entries were due to their accountant's carelessness; and
- argued that the Presumption of Continuity should not apply as there was no direct evidence of suppression of purchases in any other year.

Decision

The First Tier Tribunal found that the company had failed to keep adequate accounting records and did not submit accurate returns. The company knowingly filed incorrect returns in order to minimise tax liabilities.

The directors provided little evidence to support their arguments and what was supplied was unconvincing. The company's accountants proved that they had frequently attempted to obtain accounting details and records from the company.

The Tribunal concluded that HMRC's assessments were made using best and reasonable judgement. With nothing to suggest that the enquiry year was unusual, the Presumption of Continuity could be relied upon. It was perfectly reasonable to assume that the suppression had occurred in the other years assessed. It was also reasonable to assume that the misrepresented profits should be treated as loans, as the company offered no evidence to the contrary.

The First Tier Tribunal found that the tax loss was deliberately created by the company's actions. The discovery and the assessments were valid.

Bobby Khan Enterprises Limited & Ors v HMRC (TC08556)

Distribution on incorporation

Summary - A distribution arose when goodwill was transferred more than its market value on incorporation, calculated by reference to the sale consideration rather than by reference to the amount of cash received.

Neil and Sharon Pickles originally ran their potato grading and processing business through a partnership but in 2011, they incorporated the business by setting up a new company. The business was transferred to the company, with just under £1.2 million attributed to goodwill, left on loan account. Later, the company entered administration with the Pickles only ever withdrawing £770,000 from the loan account.

Neither Neil nor Sharon Pickles declared any capital gain, with the result that HMRC opened an enquiry into their affairs.

HMRC revalued the goodwill at £450,000 which was liable to CGT and further, assessed the excess of £750,000 as a taxable distribution.

Neil and Sharon Pickles appealed to the First Tier Tribunal who allowed the appeal concluding that:

- The market value of the goodwill was even lower, valued at £270,000;
- The distribution was £501,000 calculated as the actual loan drawn down of £771,000 less the market value of the goodwill, £270,000;
- The balance on the loan account of £429,000 owed to the directors was not a distribution.

HMRC appealed to the Upper Tribunal, with the Pickles cross appealing.

Decision

The Upper Tribunal found that the First Tier Tribunal had erred in law.

The correct approach was to calculate the distribution as the difference between the value of the asset transferred and the amount of the benefit received at the time the Pickles had a contractually enforceable right to receive the benefit which was at the date of disposal. A third-party valuation had calculated this value to be £1.2 million and there was no evidence to support it being any other figure. The full amount of £1.2 million had been recorded in the sale agreement, which was payable

in cash or on demand as debt. The Tribunal stated that there was no basis to discount the value of the debt on the basis that the company only ever repaid £771,000.

On this basis, the distribution was valued at £930,000, calculated as the value of the benefit received of £1.2 million less the market value of the goodwill transferred of £270,000.

HMRC's appeal was allowed.

HMRC v Mr Neil and Mrs Sharon Pickles [2022] UKUT00253

Private ambulance services

Summary – Non-emergency ambulance services provided to the NHS were zero-rated and not exempt from VAT.

E-Zec Medical Transport Services Ltd provides non-emergency patient transport on behalf of various NHS trusts in England. Their vehicles transport patients to and from hospital and doctor's appointments.

Their vehicles were configured to be able to transport patients and their mobility aids, including wheelchairs. Typically, each vehicle could carry eight patients plus their wheelchairs. A floor tracking system allowed the vehicle to be easily reconfigured daily depending on the needs that day.

The issue in this case was whether the company's services were zero-rated, enabling the company to recover input tax, or exempt, so restricting this ability. Both parties agreed that if the services qualified for zero-rating, this would take precedence over the exemption.

For zero-rating to apply, normally vehicles must be designed or adapted to carry ten or more passengers. However, the number of passengers can be reduced if the vehicle would normally be capable of transporting 10 passengers but has been designed or adapted to carry two or more persons in a wheelchair.

Decision

The First Tier Tribunal concluded that if the vehicle modifications, including the floor tracking system, were removed, the vehicles would have been able to carry 10 passengers. Consequently, zero-rating should apply.

E-Zec Medical Transport Services Limited v HMRC (TC08574)

Assessment out of time?

Summary – HMRC's assessment had been issued within time, within one year after the date when an officer had 'evidence of facts, sufficient in the opinion of the commissioners to justify the making of the assessment'.

An HMRC officer first visited the premises of Nottingham Forest Football Club Ltd on 16 April 2018, returning on 20 April 2018 to examine invoices and download data from the company's accounting system. On 9 May 2018, HMRC were given a memory stick with data from Sage.

On 29 April 2019, HMRC issued an assessment to collect £345,561 of VAT, which related to the August 2015 return.

Nottingham Forest Football Club Ltd believed that this assessment was out of time as under s.73(6)(b) VATA 1994, an assessment to correct a VAT return must be issued by HMRC by the later of:

1. two years after the end of the accounting period being adjusted; or
2. one year after the date when an officer had 'evidence of facts, sufficient in the opinion of the commissioners to justify the making of the assessment'.

Both Nottingham Forest Football Club Ltd and HMRC agreed that it was the latter of these two dates that was relevant to this case.

Nottingham Forest Football Club Ltd claimed that HMRC had sufficient knowledge to raise the assessment after their second visit, meaning that the assessment should have been issued by 20 April 2019.

HMRC claimed that the relevant date was 9 May 2019 as the back-up memory stick was a key part of the accounting system that needed to be analysed.

Decision

The First Tier Tribunal confirmed that it was for Nottingham Forest Football Club Ltd to prove why HMRC had failed to meet the 12-month deadline.

The Tribunal found that Nottingham Forest Football Club Ltd had failed to prove that the memory stick was not relevant to HMRC's work in calculating how much tax was due for the period in question.

The appeal was dismissed.

Nottingham Forest Football Club Ltd (TC08577)

Reservation service

Summary – The services provided to providers of short-term rentals were standard rated. There was no separate service relating to corporate card handling fees.

SilverDoor Limited provided services to providers of short-term rentals of hotels, serviced apartments and similar properties. The company acted as disclosed agent for its property partners. The accommodation was booked by clients which were generally businesses seeking short-term accommodation for employees on temporary assignments.

SilverDoor Limited charged a commission for advertising properties, handling reservations, and dealing with the payment of client fees. Further, if a client guest paid by a corporate card, they were charged a 2.95% fee to cover the extra charge made by the card company.

HMRC issued an assessment for fees charged in the three-year period between October 2015 and 2018. HMRC argued that SilverDoor Limited was providing a reservation service that was standard rated.

SilverDoor Limited claimed that this additional 'card fee amount' was outside the scope of VAT as it represented a disbursement. SilverDoor Limited did not hold, store, or transmit any credit card data. The amount was revenue neutral as they made no profit on the amount charged. If the fee was not outside the scope, the company argued that it would be exempt as a financial service under Schedule 9 Group 5 Item 5 VATA 1994.

The company appealed.

Decision

The First Tier Tribunal agreed with HMRC that SilverDoor Limited was supplying a standard-rated reservation service.

Payment made by a client using a corporate card did not bring about a change in the legal and financial relationship between the parties. SilverDoor Limited did not carry out a transfer of any money. There was no separate supply of a financial service that could qualify for VAT exemption

The appeal was dismissed.

SilverDoor Ltd v HMRC (TC08554)