

## Personal tax update (Lecture P1341 – 17.34 minutes)

### Old residency rules - Move to Belgium

*Summary – Applying the rules predating the statutory residence test, the taxpayer was resident in both the UK and Belgium. With his 'centre of vital interests' remaining in the UK, he was deemed UK resident under the Belgium/UK double taxation convention.*

Prior to 4 April 2006, Kevin McCabe was resident and ordinarily resident in the UK. He was born in the UK, married with two sons and two grandchildren, all of whom lived in the UK. He was a successful businessman in the building trade.

On 7 April 2006, an article in “Property Week” reported that he had relocated to Belgium to create a European Headquarters in Brussels from which he would be responsible for managing the expansion of international business, particularly in Western and Central Europe and overseeing Teesland Development Company Ltd’s European expansion.

Initially, Kevin McCabe rented a flat in Belgium, before buying a property which he moved into in November 2006. Although his wife visited, she largely remained living in the UK with the rest of their family. He took steps to establish a clean break from the UK. He replaced some UK bank accounts with accounts in Belgium. He resigned from various boards and clubs and changed his address with various contacts and organisations. He had a permanent office in Brussels and joined a local gym. He spent regular time in Brussels.

However, he returned regularly to the UK for Christmas, to watch a good number of Sheffield United football matches (home and away) and attend key social events including the Player of the Year dinner. Outside of this, time with his wife was mostly spent at La Manga, but also on short holidays and longer business trips. Kevin McCabe was owner of the Scarborough Group, incorporated and resident in the UK. He continued to be director of the holding companies and some of the other companies within the group. He retained significant influence both as owner and director. He conducted a wide range of activities in the UK.

HMRC argued that Kevin McCabe remained UK resident for tax purposes. He did not need to be in Brussels at all as he was working predominantly with people in the UK, there were fewer face-to-face meetings in Brussels compared to those on days he was in London and those that were in Brussels had nothing to do with Belgium.

The First Tier needed to determine whether Kevin McCabe ceased to be resident in the UK on 4 April 2006, and if he did not, as he was resident in Belgium, whether he was entitled to be treated as non-UK resident under the terms of the Belgium-UK Double Taxation Convention for the whole or part of 2006/07 and 2007/08.

#### *Decision*

The First Tier Tribunal found that Kevin McCabe remained UK tax resident. His wife remained in the UK family home, he visited the UK regularly to see family and friends but also to attend sporting fixtures. Further, the Tribunal were not convinced that he had handed over responsibility for running the UK businesses. His UK visits were frequent and there was no clean break with the UK.

With the First Tier Tribunal concluding that he was UK resident, the application of the Belgium-UK Double Taxation Convention became relevant. Article 4 defines residence and sets out how to determine the residence status where an individual is resident in both the UK and Belgium.

The First Tier Tribunal found that under the double tax treaty, both his personal and economic interests remained in the UK, which was his centre of vital interests.

*Kevin McCabe v HMRC (TC08609)*

## **SEIS relief denied**

*Summary – Although a qualifying company that passed the risk to capital condition, it only did so as a result of ‘disqualifying arrangements’ being in place.*

Coconut Animated Islands Ltd was incorporated to exploit the intellectual property rights to a pre-school animation programme called Coconut Bay, and related spin-offs. The programme had been conceived by Mr Fenna in the 1990s. At the time when Coconut Animated Islands Ltd acquired the rights to the programme, Mr Fenna was the creative director of CHF Entertainment Limited, a member of a group of companies headed by CHF Media Group Limited.

In 2017, Coconut Animated Islands Ltd sought and received advance assurance on its qualifying status under the seed enterprise investment scheme (SEIS).

True to their word, HMRC issued compliance certificates for shares issued prior to 15 March 2018 but then refused to authorise later share issues.

HMRC initially refused on the basis that the company failed the “risk-to-capital condition” requirement stating that, taking into account all of the circumstances at the time when the relevant shares were issued, the company did not have “objectives to grow and develop its trade in the long-term”.

HMRC later advanced two further arguments:

1. The company was not a qualifying company as it failed to meet the trading requirement for the three-year period commencing with the date when the shares were issued. For this purpose, “excluded activities” included receiving royalties or licence fees unless these were from intellectual property that it had created.
2. The relevant shares failed to meet the “general requirements” condition which requires there to be no “disqualifying arrangements”. HMRC argued that there were arrangements in place to secure a “qualifying business activity” to obtain SEIS relief.

## *Decision*

On the first argument, the First Tier Tribunal found that on balance, the company did have objectives to grow and develop its trade in the long term. The use of sub-contractors in the animation sector was normal and so it was not significant that the company had no plans to increase the number of employees. Further, the fact that there was an exit strategy for the investors had no bearing on the company objectives.

Turning to HMRC's point that the intellectual property had not been created by the company, the Tribunal stated:

'where the act of creation by the person doing the work takes place in circumstances where the right to exploit the asset when the work has been completed vests in the relevant company, then the relevant company is to be regarded as having "created" the intellectual property itself'.

This was the case here. The company had commissioned the work, with company deriving the right to exploit the intellectual property. The company was not undertaking excluded activities.

Finally, the First Tier Tribunal found that the relevant shares had been issued, and the money raised was used in connection with, 'disqualifying arrangements' so the taxpayer failed the general requirements condition. The Tribunal stated that the arrangements involved the incorporation of Coconut Animated Islands Ltd, with the subsequent acquisition of Mr Fenna's intellectual property. Coconut Animated Islands Ltd raised funds by the issue of shares to the investors in the CHF group so that Coconut Animated Islands Ltd would be able to carry on its "qualifying trade". The Tribunal concluded:

"the whole or a majority of the money raised was, in the course of the arrangements, paid to or for the benefit of a person which was a party to the arrangements or a person which was connected to a party to the arrangements (s. 257CF(3) ITA 2007)."

The Tribunal went on to say that it could:

"not see how it is possible to assert that no member of the CHF Group was a party to the "arrangements" as so described. On the contrary, the fingerprints of the CHF Group are all over every step in the "arrangements".

The appeal was dismissed.

*Coconut Animated Islands Ltd (TC8575)*

## **Joining terraced properties**

*Summary - The purchase of a property, later connected to an existing main residence, was the purchase of an additional property and so chargeable to a higher rate under Welsh Land Transaction Tax.*

At some point in the past, three terraced properties had been a single dwelling. However, for many years they had been partitioned, with access between the properties bricked up, with each having separate legal titles.

Mr and Mrs James owned the end-of-terrace property and lived in it as their main residence. On 25 October 2019, the couple bought the adjoining house for £80,000 (with exchange and completion taking place on the same day). Mr and Mrs James immediately set about removing the partition between the properties so that there would be a single property.

A Land Transaction Tax return was filed on the basis that the higher rate of LTT was not due because the same main residence exception applied. The couple stated they intended to:

- contact the local authority to arrange for the property to be classed as one dwelling for council tax purposes;
- notify all service providers that the property is a single dwelling; and
- arrange the house insurance on the basis that the property is a single dwelling.

The Welsh Revenue Authority opened an enquiry, later issuing a closure notice and raised penalties on the basis that the taxpayer had acted carelessly. Broadly, it stated that the transaction must be assessed according to the position as at the effective date and it should be assessed based on intention. In their view the property was a separate dwelling to the main residence at the time of purchase and so was liable to higher rates.

#### *Decision*

The First Tier Tribunal found that the purchase of the property was a higher rate transaction because at the end of the day of purchase, the taxpayer held a major interest in another dwelling worth in excess of £40,000. The newly purchased property did not form part of the main residence prior to its purchase.

The Tribunal confirmed that the LTT return was inaccurate and had been completed carelessly.

The only consolation for the couple was that the penalty had been calculated on the wrong basis and should be amended.

The appeal was allowed in part.

*Carl James v The Welsh Revenue Authority (TC08563)*

### **Discovering officer could not be named**

*Summary – The discovery of discrepancies between a Stamp Duty Land Tax return and Land Registry forms was valid, even though no specific discovering officer could be named.*

In 2008 David Wilby, a well-respected King's Counsel, bought a property in North Yorkshire. His SDLT return reported consideration of £120,000, meaning that no SDLT was payable.

HMRC had had concerns about schemes being used to reduce SDLT. Although there were a number of variations, the common theme was that the schemes involved sub-sales through gifts or assignments which were not, in HMRC's view, effective to avoid a charge to SDLT. As a result, a team was established to investigate cases where there was a possibility that an ineffective scheme had been used.

David Wilby's return was one of those cases. HMRC identified that the Land Registry Form TR1 stated consideration of £542,000, rather than the £120,000 used for SDLT purposes. HMRC raised a discovery assessment.

This case was not concerned with the SDLT due but rather the validity of the discovery assessment. As a team effort, HMRC could not name a specific officer who was responsible for the discovery. David Wilby challenged the validity of the assessment.

#### *Decision*

The First Tier Tribunal found that the discovery assessment had been raised by an officer and it was not necessary to identify the specific officer who had made that discovery.

If it is evident that an officer must have made the discovery, then the officer does not need to be identified. In this case, HMRC's procedures highlighted the discrepancies between Land Registry and Stamp Duty Land Tax returns and an officer viewing David Wilby's case must have made the discovery.

The Tribunal also found that the other requirements for validity were met,

The appeal was dismissed.

*David Christopher Wilby v HMRC (TC08589)*

### **CJRS information notices**

Summary – Bank statements are statutory records and so there was no appeal against a notice requiring their production. Further, they were reasonably required for checking the company's tax position.

Fresh Consulting and Support Limited operated an IT consultancy business, which deregistered for VAT in 2014 and had not made any Corporation Tax returns since 2016.

The company made claims under the Coronavirus Job Retention Scheme (CJRS) totalling some £73,000 in relation to its sole director and two employees said to have commenced employment on 16 March 2020.

With no tax returns submitted for some but claims made under the CJRS, HMRC undertook a compliance check, later issuing an information notice in relation to the CJRS payments, requesting copies of bank statements, information about the company's business and details of how the grant claims were calculated.

The company appealed, having supplied only heavily redacted bank statements.

Strangely, the IT consulting company stated that it did not have the capability to participate in a video hearing. Further at the face-to-face hearing the company did not attend nor send representation.

### *Decision*

The First Tier Tribunal confirmed that payments under the CJRS can lawfully be the subject matter of an information notice.

The Tribunal stated that bank statements are statutory records which the company could not withhold nor redact. Further, the statements were reasonably required for checking the company's tax position.

The Tribunal stated that even though the company had closed before the start of the lockdown:

“the redactions on the bank statements are extremely extensive, with only a very few transactions (being payments out to employees) unredacted. That indicates that the appellant was still undertaking or engaged in many banking transactions at the time....”

The First Tier Tribunal struck out the appeal and ordered that it be complied with, in full, within 30 days of the release of the Tribunal's Decision.

*Fresh Consulting and Support Limited v HMRC (TC08606)*

## Government's latest plan

Following the appointment of Jeremy Hunt as Chancellor of the Exchequer, many of the announcements contained within the Government's Growth Plan that was announced in September have now been reversed.

Here is a summary of what has been reversed:

- The corporation tax rate will increase to 25% from April 2023 as originally planned.
- Both the basic rate of income tax (20%) and additional rate (45%) will be maintained.
- On dividends, each income tax rate band will retain the extra 1.25% added from April 2022 (basic: 8.75%, higher: 33.75%, and additional: 39.35%);
- The off payroll working rules have been reinstated.
- VAT tax free shopping for non-UK visitors will not go ahead.
- The freezing of alcohol duty has been scrapped.

The government has confirmed that:

- workers will still benefit from the reversal of the 1.25% increase in NICs from 6 November.
- the increase in the Annual Investment Allowance to £1 million will go ahead as will the changes to the seed enterprise investment scheme and company share option schemes rules;
- the SDLT changes announced in the mini-Budget will go ahead as originally announced so that the:
  - SDLT threshold will increase to £250,000;
  - SDLT threshold for first-time buyers will increase to £425,000;
  - maximum value of a property on which first-time buyers' relief can be claimed will increase to £625,000.

The government has announced that, rather than the medium-term fiscal plan scheduled for release on 31 October 2022, a full Autumn Statement will be announced on 17 November. This will be given alongside forecasts from the Office for Budget Responsibility.