

Personal tax update (Lecture P1401 – 18.26 minutes)

Compensation for loss of share rights

Summary – Money received was taxable under the employment related securities rules, meaning that the £30,000 exemption on termination of employment was not in point.

Peter Hemingway was an IT specialist employed by Broadcom UK Ltd and in June 2006 and May 2007, he was granted options over shares in his employer's US parent company.

Following a takeover in 2016, all stock options were cancelled and employees received a cash payment representing the value of their lapsed options.

Peter Hemingway's payslip included gross earnings of just over £35,000, described as a "Notional Share Gain", with £16,000 of tax and national insurance deducted. He left his employment.

In April 2016 Peter Hemingway submitted a voluntary 2015/16 tax return reporting the payment as taxable income.

A few months later, in August 2016, he amended his return claiming he was entitled to relief under s.401 ITEPA 2003 meaning that the first £30,000 of the payment was exempt from tax. He claimed that he had received a voluntary payment in connection with the loss of employment rights.

HMRC disagreed and argued that the payment was linked to his loss of share options.

Peter Hemingway argued that HMRC's closure notice denying the exemption was invalid as he had submitted a voluntary return and was not in Self Assessment. HMRC asked him to treat the initial return as having been made under a valid notice, but when he declined to do so, HMRC issued a second return, which HMRC amended to exclude the £30,000 exemption.

Peter Hemingway appealed.

Decision

The First Tier Tribunal found that s.476 ITEPA 2003, the employment-related securities rules, took precedence over s.401 ITEPA 2003 covering payments and benefits on termination of employment.

Further, the Tribunal was confident that the receipt fell within s.477(6) ITEPA 2003 as a benefit in consideration or in connection with failing to acquire securities. Consequently, it was taxable in full as earnings from the employment.

The appeal was dismissed.

Peter Hemingway v HMRC (TC08929)

Formula 1 lawyer's appeal

Summary – The receipt of some £40 million in payments from the Ecclestone family was taxable income and not gifts, as contended by the taxpayer.

Stephen Mullens was both lawyer and adviser to the Ecclestone family from whom he received a number of payments:

In 1999/2000 he received £1.2 million, which the First Tier Tribunal found to be part of his remuneration package for his services to the Ecclestone family interests.

In 2000/01 he received two further payments (£750,000 and £300,000) into an offshore account, which were also found to be financial rewards for his services.

In 2006/07 he received \$38 million and in 2012/13 he received \$19.5 million and £5 million, all which he claimed to be gifts from Mr Ecclestone's wife but once again the First Tier Tribunal found to be financial rewards for his services.

HMRC issued discovery and penalty assessments, some of which were under the extended time limits for making an assessment (six years for careless conduct and 20 years for fraudulent or deliberate conduct). The First Tier Tribunal found that the penalties were correctly raised on the basis of the taxpayer's deliberate failure to declare the payments in his Self Assessment tax returns.

This appeal concerned two separate matters:

- the taxability or otherwise of the six payments made to or for the benefit of Stephen Mullens; and
- whether penalties were correctly assessed as a result of his failure to declare those payments in his Self Assessment returns as his income.

Decision

The Upper Tribunal confirmed that where Stephen Mullins' behaviour was either careless or deliberate, HMRC can make a discovery assessment for the loss of tax under s.29 TMA 1970 and that the time limit for such assessments is extended by s.36 TMA 1970 for culpable conduct.

The Upper Tribunal confirmed that all of the payments made were taxable income and that Stephen Mullens knew that they should have been disclosed on his tax returns, but he deliberately chose not to do so.

Stephen John Mullens v HMRC [2023] UKUT 00244 (TCC)

HICBC – ignorance of the law

Summary – The taxpayer had a reasonable excuse for failure to notify chargeability to the high-income child benefit charge, which he remedied once he received the nudge letter, without unreasonable delay.

Waseem Shahid worked offshore and earned a salary of £42,000 plus overtime.

In 2019, having received a nudge letter from HMRC regarding the High-Income Child Benefit Charge (HICBC), he contacted HMRC who subsequently assessed him to the charge for the years 2014/15 through to 2017/18 and imposed penalties for failure to notify.

Waseem Shahid accepted the charge but appealed the penalties arguing that his wife:

- claimed the child benefit relating to their children;
- knew only of his basic salary which was below the £50,000;
- never saw any of the paperwork relating to his employment, such as P60s;
- had a separate bank account into which he put her housekeeping money.

Waseem Shahid is paying the HICBC by instalment but challenged the penalties.

Decision

The First Tier Tribunal considered Waseem Shahid to be a reliable witness and accepted his evidence. The issue to decide was whether ignorance of the law could be a reasonable excuse in this case.

The Tribunal highlighted the many HICBC cases that have been heard, with only a handful determined in the taxpayer's favour, a number of which have been determined by Judge Popplewell.

Usefully, this case summary highlights when Judge Popplewell is likely to find that the taxpayer has a reasonable excuse. This is when they were:

- (1) not under an obligation to complete a tax return for the tax years prior to that in which the HICBC applied because, primarily, they were paid through PAYE and had no other income justifying a need to notify;
- (2) in receipt of child benefit payments prior to the introduction of HICBC with the consequence that the application itself made no reference to HICBC (the child benefit claim form after the introduction of HICBC clearly sets out when the charge applies);
- (3) had not received notification from HMRC directly at any point prior to the contact which led to the issues of the tax assessment; but
- (4) acted promptly in ceasing to claim child benefit and engaged actively with resolving the historic tax liabilities as soon as HMRC did make contact.

Together, the couple knew Waseem Shahid was earning more than £50,000 meaning he was liable to the HICBC but "individually each was missing actual knowledge of a crucial part of the legislative jigsaw". The Tribunal stated that it was not for his wife to establish a reasonable excuse nor that collectively they had a reasonable excuse. The penalties were being assessed on him alone and so ignorance of the law could be a reasonable excuse for him.

The facts were that:

- Waseem Shahid's spouse knew that income of over £50,000 for either herself or her spouse would mean that the HICBC applied as this was contained on her child benefit forms but she did not know that her husband's adjusted net income was more than £50,000.
- Waseem Shahid was only aware of the issue when he received the nudge letter which gave the detailed criteria which would render him liable to the charge. The Tribunal concluded that this was a reasonable excuse for having failed to notify chargeability until then.

Did it matter that it took a further four months to remedy the failure? The Tribunal thought not. He contacted HMRC within a week of receiving the letter and then sought to clarify the situation. Once the facts were clear, he accepted liability and has been paying the charge by instalments since that time. It was 'clear that he was a busy man and needed to digest this information'.

The appeal was allowed.

Waseem Shahid v HMRC (TC08906)

Charging company cars and vans at home

Certain payments and benefits like road tax, insurance and repairs, when related to taxable company cars and vans, are exempted from being taxed as a benefit in kind (s.239 ITEPA 2003).

Previously, HMRC maintained that the reimbursement of costs relating to charging a company car or van at a residential property was not covered by this exemption but it has revised its position.

Reimbursing part of a domestic energy bill, which is used to charge a company car or van, will fall within the exemption. However, the exemption will only apply where it can be demonstrated that the electricity was used to charge the company car or van. Employers will need to make sure that any reimbursement made towards the cost of electricity relates solely to the charging of their company car or van.

<https://www.gov.uk/government/publications/employer-bulletin-october-2023/october-2023-issue-of-the-employer-bulletin#electric-charging-cars-vans>

Reservation agreement prior to acquisition

Summary - Agreement to reserve an apartment within a residential property was not an option for SDLT purposes, meaning that the agreement fees and ultimate purchase price were chargeable at the SDLT residential rate.

In these two lead appeals, a potential purchaser entered into a reservation agreement, expressing the wish to purchase a specified apartment in a new-build residential property development for a specified price. Under the agreement the potential purchaser would pay a specified reservation fee (0.2% to 0.3% of the purchase price). Each agreement stated that the reservation period was for a specified number of days, after which the agreement would be automatically extended until ended by the vendor on giving 5 days' notice.

Each appellant subsequently acquired a 999-year lease of the apartment, submitting an SDLT return indicating that that transaction was chargeable to SDLT at the residential rate. This was later amended to reclassify the transaction as chargeable at the non-residential rates on the basis that the:

1. Reservation agreement was an option and/or right of pre-emption within the meaning of s 46(1) FA 2003 falling outside the definition of residential property meaning that the non-residential SDLT rates applied;
2. Subsequent acquisition of the residential property was a linked transaction to the non-residential option; with mixed use the non-residential rates therefore applied.

HMRC disagreed, issuing closure notices on the basis that the original return had been correct.

Decision

The First Tier Tribunal found that:

- under the reservation agreements the vendor was obliged not to negotiate with anyone other than the potential purchaser;
- the agreement was neither an option nor a pre-emption agreement over land as it did not confer any right on the prospective buyer and imposed no legal obligation on the vendor to sell the apartment to the prospective purchaser.

Consequently, as the reservation agreement was not a land transaction, it could not be a linked transaction with the acquisition of the 999-year lease of the apartment and the appeal failed.

Further, the Tribunal found that even if the reservation agreement were an option over land that was linked with the subsequent lease acquisition, the residential rate of SDLT would have been chargeable as the apartment was residential land. It would have made no difference if at the time of the agreement construction had not yet begun.

The Tribunal commented that:

'If the appellants' arguments in these appeals had been accepted, that might have led to the question whether any purchaser of any residential property could avoid having to pay SDLT at the residential rate, through the simple device of entering into a reservation agreement shortly before contracts are exchanged.'

Landmaster Investment Limited and another v HMRC (TC08919)

Adapted from the case summary in tax Journal (22 September 2023)

Dilapidated property was a dwelling

Summary – At the time of the purchase, the property was suitable for use as a dwelling, meaning that SDLT had been correctly paid using the residential rates and no refund was due.

Henderson Acquisitions Ltd bought and renovated domestic houses for resale.

In August 2016, following the death of its former owner and occupier, the company acquired a property in Letchworth, Hertfordshire, which had been vacant whilst probate was obtained.

The company paid SDLT in the basis that the property was residential and, having been bought by a company, the higher rates of SDLT applied.

Prior to purchase, the company considered the property to be a suitable property for renovation; it appeared “sound but needed modernising”.

However, shortly after purchase, the kitchen ceiling had collapsed due to a leaking water pipe in the central heating system. This limited safe access to the kitchen, dining room, bathroom and one bedroom. Looking at a floor plan, the damage affected less than half of the property’s floor area.

Further, the whole property needed rewiring as over the years there had been “multiple DIY alternations ... [using] incorrect cable sizes and types, termination points in inaccessible locations and numerous potential fire hazards from incompetent workmanship”.

The work needed was all undertaken without needing to demolish any part of the building which, at all times remained sound.

However, the company was later advised that following the decision in *PN Bewley Ltd v HMRC* where the property had needed to be demolished, the company should seek an SDLT refund as the property was not “suitable for use as a dwelling” meaning that non-residential rates of SDLT applied.

Following an enquiry into the claim, in March 2020, HMRC rejected the claim arguing that the replacement of central heating systems, damp proofing, replacing flooring etc were not sufficient to render the property unsuitable for use as a dwelling (*Fiander and Bower v HMRC*).

The company appealed.

Decision

The First Tier Tribunal noted that prior to purchase, the property had been occupied as a dwelling by its former owner.

The Tribunal found that the property was 'structurally sound', had all the required facilities for living and less than half of the floor area was considered to be unsafe. In its view, the renovation work required was all of a type which might have been needed in order to make a dwelling into a habitable residence meeting modern building standards.

The First Tier Tribunal concluded the company had renovated the dwelling “into a beautiful house ready for immediate occupation. They did not take a non-residential building and make it into a dwelling.”

The appeal was dismissed.

Henderson Acquisitions Ltd v HMRC (TC08922)

Failure to take reasonable care

Summary – Having carried out no background checks on his agent prior to appointment and having failed to review the tax returns submitted on his behalf, HMRC’s penalties were upheld as the taxpayer was found to have acted carelessly.

Sunil Joseph worked as a social worker, with tax and national insurance deducted under PAYE.

Through emails from his trade union, he learned about his ‘entitlement’ to expense claim and approached an agent who claimed to have previously worked for HMRC, which Sunil Joseph ‘took his word for, carrying out no background checks of his own.

Using only the P60s supplied by Sunil Joseph, the agent submitted Self Assessment returns for 2013/14 to 2017/18 on his behalf, which included:

- deductions for travel, subsistence and professional fees;
- trading losses for 2013/14 to 2016/17 on the basis that he had been self-employed and the losses had been set off sideways against his employment income.

This resulted in tax repayment claims for the five tax years totalling just under £23,000.

Later, HMRC raised discovery assessments to recover the income tax repayments and imposed £3,412.56 of penalties for inaccuracies in his tax returns.

The tax liabilities and related interest amounts were accepted and are being settled by way of a payment plan. However, Sunil Joseph appealed the penalties.

Decision

The First Tier Tribunal found that Sunil Joseph had not taken reasonable care as he had failed to:

- carry out any kind of due diligence relating to his agent.
- check his tax returns before they were submitted.

Further, the expenses claimed were not supported by any receipts. These checks did not require any specialist tax knowledge.

His appeal was dismissed.

Sunil Joseph v HMRC (TC08895)