

## Personal tax round up

(Lecture P1096 – 17.38 minutes)

### Budget announcement

The Budget had been expected to take place in late November or early December. In an attempt to avoid any Brexit clash, Phillip Hammond has announced that it will take place on 29 October 2018.

### Are football referees employees?

*Summary – Payments to “Select group” referees officiating at Premier League matches did not fall within the PAYE system*

Professional Game Match Officials Limited is a company limited by guarantee whose three members are the FA, the Premier League and the Football League, now referred to as the English Football League.

The company's role relates to the provision of referees and other match officials for matches in the most significant national football competitions, in particular the Premier League, the FA Cup, and the English Football League, which comprises 72 clubs in the Championship League and Leagues 1 and 2. The FA classifies referees by reference to a number of different levels, ranging from International, then Level 1 (the National List) to Level 9 (trainee referees). There are over 30,000 referees in total, the vast majority at the lower levels.

Professional Game Match Officials Limited organises the referees who officiate in their competitions and employ a number of referees under full-time written contracts. These are referred to as the “Select Group” or “National Group” referees, who at the relevant time primarily refereed Premier League matches. Some of these individuals are also qualified to referee internationally.

At the start of each season, these referees sign an overarching agreement with Professional Game Match Officials Limited. Professional Game Match Officials Limited then offers referees individual match engagement but referees are free to choose whether or not they accept these engagements.

The company runs paid training sessions but attendance is not compulsory. Professional Game Match Officials Limited provides the black kit for matches as well as suits for wearing to and from matches but the referees provide other items including boots, watches, whistles and cards all of which are essential to role of the referee.

This appeal concerned Reg. 80 determinations for 2014/15 and 2015/16 totalling nearly £600,000 of income tax and NICs. HMRC argued that Professional Game Match Officials Limited should have operated PAYE in respect of the national group of referees who they claimed were employees.

*Decision*

The First Tier Tribunal concluded that there was no mutuality of obligation outside individual match engagements; neither the overarching annual contracts nor the individual engagements were contracts of service

Professional Game Match Officials Limited could withdraw an engagement. The Tribunal noted that referees chose whether or not to accept matches offered to them and if they failed to attend a match they were not paid. Even if a referee agreed to officiate a match, the referee could withdraw.

Once the match was underway, Professional Game Match Officials Limited has no control over referee decisions; the referee's decision was final and only the FA can deal with regulation breaches

The Tribunal found that the referees had no right to substitute another person; if they could not attend a match then Professional Game Match Officials Limited would appoint the replacement.

Although Professional Game Match Officials Limited supplied some kit and ran training courses. Referees supplied key elements of a referee's equipment and were responsible for managing their fitness levels as well as pre-match preparation.

The First Tier Tribunal concluded that the National Group referees were not employed under contracts of service during the periods under appeal, and the appeal was allowed.

*Professional Game Match Officials Limited v HMRC (TC06698)*

## **Fuel card benefit**

*Summary – Payment by fuel card with the private use element reimbursed after the end of the tax year was held to be a taxable benefit*

Exel Computer Systems Plc provided cars to employees that were reported correctly to HMRC as benefits. Non-office based employees were able to pay for fuel using a fuel card, that the company initially paid for.

The employees were required to reimburse the private element of their fuel costs and so the company believed there was no fuel benefit and nothing was reported on employee P11Ds.

HMRC disputed this process and raised assessments to recover class 1A NIC and so the company appealed.

### *Decision*

The First Tier Tribunal said the concept of fair bargain applied when employees received something from their employer under the precise same terms as an independent third party. But that this was not the case here. Employees paid for fuel using a company card but reimbursed the employer for their private fuel after the end of the tax year in which they received it. There were no contractual terms or deadlines by which such payments had to be made by employees.

The tribunal noted:

'At least 80% of employees have received fuel in April one year and will not have made a payment of any sort until July the following year at the earliest. Of this 80% a significant number did not make any payment in respect of the fuel for a further year.'

They said that no member of the public would be able to defer payment for at least 12 months, sometimes up to two years, without there being a cost such as a penalty or interest for late payment. This was a benefit in the ordinary sense of the word and a benefit in kind for the purposes of ITEPA 2003, s 62(b).

Exel Computer Systems PLC's appeal was dismissed.

However, the Tribunal found HMRC to be time-barred for one of the years because it was outside the limitation period. The fact that the company had made a specified payment on account for the year was not an indication of an explicit agreement or contract between the parties.

*Exel Computer Systems PLC v HMRC (TC06561)*

*Adapted from Taxation (23 August 2018)*

## **Postgraduate Loans**

The Department for Education have launched a new Student Loan product known as Postgraduate Loans.

The earliest individuals can start repayment of Postgraduate Loans is April 2019 through PAYE or April 2020 through Self-Assessment.

If clients have a Postgraduate Loan:

- HMRC will send their employer a new Postgraduate start notice (PGL1) to ask them to start taking Postgraduate Loans deductions;
- HMRC will send their employer a new Postgraduate stop notice (PGL2) to ask them to stop taking Postgraduate Loans deductions;
- Individuals may also be liable to repay a Student Loan Plan Type 1 or 2 concurrently with Postgraduate Loans. HMRC will let their employer know this by continuing to send the normal Student Loan start (SL1) and Student Loan stop (SL2) notices as well as PGL1s and PGL2s.

HMRC are working with software developers to finalise the technical specifications.

[https://www.gov.uk/government/publications/agent-update-issue-67?utm\\_source=f3ea109e-2aa7-49dd-a4ea-ce80c4ef1c4b&utm\\_medium=email&utm\\_campaign=govuk-notifications&utm\\_content=immediate](https://www.gov.uk/government/publications/agent-update-issue-67?utm_source=f3ea109e-2aa7-49dd-a4ea-ce80c4ef1c4b&utm_medium=email&utm_campaign=govuk-notifications&utm_content=immediate)

## **Help-to-save scheme now live**

The launch of this scheme follows an 8-month trial, with over 45,000 customers who deposited in excess of £3 million. Help-to-save is a type of savings account aimed at people entitled to Working Tax Credit or receiving Universal Credit to get a bonus of 50p for every £1 they save over 4 years. The accounts will be available to open from 12 September 2018 and up to September 2023.

Account holders can save up to £50 each month for 4 years from the date the account is opened. After 2 years, holders receive a 50% tax-free bonus on savings. If saving continues, there is another 50% tax-free bonus after 4 years. That means that on maximum savings of £2,400 over 4 years, the overall bonus would be £1,200.

Savers can apply online or use the HMRC app.

### *Who can open an account?*

The scheme is open to UK residents who are entitled to Working Tax Credit and receiving Working Tax Credit or Child Tax Credit payments as well as those claiming Universal Credit who have a household or individual income of at least £542.88 for their last monthly assessment period (though note that payments from Universal Credit are not considered to be part of household income).

People living overseas who meet either of these eligibility conditions can apply for an account if they are: a Crown servant (or their spouse or civil partner); a member of the British armed forces (or their spouse or civil partner).

### *Withdrawing money*

Account holders can withdraw money at any time although this could affect the size of their bonus.

If the individual's situation changes and they stop receiving Working Tax Credit or Universal Credit, they can still save and receive any bonus that they are entitled to.

[www.gov.uk/government/news/savers-to-earn-50p-for-every-1-saved-thanks-to-help-to-save](http://www.gov.uk/government/news/savers-to-earn-50p-for-every-1-saved-thanks-to-help-to-save)

## **Irrecoverable loan write off**

*Summary – Loans written off were irrecoverable and were an allowable loss for capital gains tax purposes.*

Douglas Atherley had been a stockbroker but, having studied design on both a part and full time basis, he decided to make a living as an interior designer and set up Kinari Design Limited in 2002, in the high end residential market. Douglas Atherley funded Kinari Design Limited through a loan account rather than through share capital.

Kinari Design Limited struggled to make its name in the high end design market, making substantial losses in the years concerned. In January 2013 Douglas discussed the prospect of being repaid the full amount of the loan to Kinari Design Ltd. The global and UK economy had consistently under-performed against forecasts since 2008. He decided to write off £350,000 of the £616,959 loans outstanding and to wind down the business in an orderly fashion ensuring all external creditors were paid. At the end of 2014,

Kinari Design Limited implemented a redundancy programme with the layoffs occurred in 2015. The company ceased trading altogether in 2016.

This appeal concerns the loan write off and raises two issues:

1. Whether an allowable loss arose in respect of the part of the loan written off in January 2013 under s.253(3) TCGA 1992; and
2. Whether the loss was not allowable because s.253(12) TCGA 1992 applied.

HMRC argued that the £350,000 loan that was written off was not irrecoverable at the date of the claim because Douglas Atherley had considered it was theoretically possible for the remaining balance to be recovered, and that a loan could not be written off in part only while Kinari continued to trade. Also Douglas Atherley went on to lend a further £65,554 after the write off which is indicative that he thought the loan was repayable. S.253(12) applied to restrict the loss because the step taken to write off part of the loan was an "act " of the lender as referred to in subsection(12). Kinari Design Limited could have borrowed from a bank to repay the loan and there would have been no write off and no allowable loss. They argued that he wrote off the debt to enable him to set the loss against a matching chargeable gain on another asset in the tax year.

#### *Decision*

The First Tier Tribunal stated that there was no realistic possibility that a lucrative project could be secured to generate sufficient profit to repay the loan. The assessment by Douglas Atherley that £350,000 of the loan to Kinari Design Limited was irrecoverable was proved not to be fanciful as Kinari Design Limited continued to make losses until its dissolution in 2016. They concluded that there was objective evidence that £350,000 of the principal amount of the loan that was written off was irrecoverable.

It was clear that loans can be written off in part and is specifically contemplated by the words "any outstanding amount of the principal" in s.253 (3)(a).

The Tribunal held that Douglas Atherley should be entitled to claim an allowable loss equal to the amount of principal on the loan claimed stating:

"We consider that "act" or "arrangement" of the sort referred to in s.253(12) must be the sort of act which would prevent the company repaying the loan. There was no such arrangement or act. A decision to cease to carry on an unprofitable trade cannot be an act to which s.253(12) refers. Nor would a decision to write off part of a loan."

They also stated:

"If the Appellant had made a decision to crystalize a loss in 2013 by writing-off part of the loan to match a corresponding amount of gain ....., this would not affect the availability of the loss in circumstances where the loan is objectively irrecoverable."

They noted that had Douglas Atherley funded Kinari Design Limited with equity capital rather than loans he could have made a negligible value claim and generated a loss of more than £350,000 as the company had accumulated losses of more than £350,000 in January 2013 and no material assets or book of business.

The appeal was allowed in full.

*Douglas Atherley v HMRC (TC06610)*

## **Meaning of consent**

*Summary – The Tribunal found in favour of the taxpayer, cancelling late filing penalties, and noted that the email messages received by her did not inform her of the assessments:*

Hannah Armstrong was self-employment and had always filed her tax returns on time. In January 2016, she ceased to be self-employed when she became employed. She accepted that HMRC had issued her with a notice to file a return, but wrongly assumed she had no need to declare nil liability.

She was unaware of electronic messages sent by HMRC to her informing her of late payment penalties for failing to file her tax return for 2015/16. On appeal she argued that the notice did not satisfy the condition in paragraph 4(1)(c) Schedule 55 FA 2009. There was no reasonable notice of the penalties, as a notice of a notice is not reasonable notice.

The issue to be decided was what was meant by consent to receive paperless communication from HMRC.

### *Decision*

The judge drew attention to what he considered to be defects in the legislation in place to deal with this and concluded that HMRC had not met the burden of proving that the taxpayer received the notices:

“ ... the appellant gave her consent to ... be treated by HMRC in the way that the terms and conditions promise, as that is reasonably understood by someone who is not a tax expert.”

“..that person would realise from reading the terms and conditions that they would get a notice to file a return sent to their secure mailbox, replacing the paper notices to file, that they would get reminders that returns and payments of tax are becoming due and that they would get statements of their tax position from time to time.

What they would not necessarily realise is that if they came to be in the small minority of late filers, that not only would HMRC send any penalty notices to the secure inbox, but also that any email they sent to alert a person to that notice of penalty would be as bland and uninformative as the emails that the appellant has put in evidence...”

Hannah Armstrong had not explicitly consented to receive penalty notices via her secure inbox and therefore HMRC had not, within the specific terms of the regulations, validly issued them. As such, the penalties were improperly raised and were cancelled.

The appeal was allowed.

*Hannah Armstrong v HMRC (TC06606)*

## The Agent Services Account

An Agent Services Account is the new way for agents to access HMRC digital services. All UK-based tax agents can now set up their Agent Services Account through which HMRC will be providing online services for agents including Making Tax Digital. Any agents who have used the Trust Registration Service will already have their account.

HMRC say that agents can use these accounts to act on behalf of their clients to:

- send Income Tax updates as part of HMRC's Making Tax Digital pilot
- register a trust online
- register an estate online for someone who has died

This list will be updated as more online services become available.

### *Who should set up the firm's Agent Services Account?*

Each firm will have only one Agent Service Account that will be linked to the UTR of the firm (income tax self assessment UTR for sole practitioners, partnership UTR for partnerships and corporation tax UTR for those trading as limited companies). Many firms have several different government gateway IDs for different offices or taxes. Once a firm has set up its Agent Service Account it will need to link all these gateway IDs to the new Agent Service Account although they will continue to be used for existing services.

### *How to create or sign in to an account*

To create an account, agents need to log in to the Government Gateway using any of the credentials that they currently use to access other HMRC online services for agents.

Once an agent services account has been created, HMRC will issue a new agent Government Gateway ID that will be needed to access new HMRC online services. It is important to make a note of these details when they appear on the screen as they cannot easily be retrieved later. These details will be needed to access the ASA and care needs to be taken not to confuse them with existing government gateway IDs. A new Agent Reference Number is allocated during the process and this also needs to be carefully recorded.

Agents should carefully consider the email address to use when setting up the new government gateway ID and ASA. It may be appropriate to use a centralised email address that has some permanence.

### *Limiting user access*

Ideally the firm's access credentials should not be shared with all staff members but instead, the manage user function should be used to create individual credentials and so limit access. Without this, a staff member logging in with the main firm credentials could view all client transactions in progress which is clearly not ideal from a security perspective.

### *Useful updates on developments*

HMRC's Talking Points webinars on agent services provide useful updates on the development of the agent service account and the related services. See Help and support for tax agents and advisers for details of forthcoming webinars and recordings of previous webinars (<https://www.gov.uk/guidance/help-and-support-for-agents>)

*<https://www.gov.uk/guidance/get-an-hmrc-agent-services-account>*