

## **Business tax round up (Lecture B1396 – 17.53 minutes)**

### **ULEZ fees**

#### *The charge*

The ultra-low emission zone (ULEZ) was expanded to all London boroughs on 29 August 2023. From this date, drivers of vehicles that do not meet the emissions standards must pay a daily charge of £12.50 when driving within this area.

HMRC has confirmed that sole traders and self-employed taxpayers are entitled to claim tax relief on low emission zone charges, including London's ULEZ fee, as long as they have been incurred 'wholly and exclusively for the purposes of the trade'.

#### *Scrappage scheme*

London residents with a vehicle that does not meet the ULEZ standards can apply for up to £2,000 for scrapping a car or up to £1,000 for scrapping a motorcycle.

For wheelchair accessible vehicles there is a payment of £10,000 to scrap or £6,000 to retrofit to the ULEZ standards.

The ULEZ van and minibuses scrappage scheme is open to small businesses (under 50 employees), micro businesses (with up to ten employees), sole traders and registered charities. The organisation must operate within the 32 boroughs of London or the City of London. The grant to scrap or retrofit a non-compliant van is £7,000 (£9,000 for a minibus).

Eligible sole traders and businesses and charities can apply to scrap or retrofit up to three vans or minibuses.

Charities – but not sole traders and businesses – that have received a grant through the previous scrappage scheme may reapply to scrap or retrofit up to three vehicles.

*Adapted from the article in Taxation, 7 September 2023*

### **Not self-employed**

*Summary – Having incorporated, the taxpayer was no longer self-employed, meaning he was not eligible for the SEISS grants claimed.*

Noel Spencer was self-employed and worked to produce bespoke signage by computer design for billboards, posters, and screen printing and in October 2019, he incorporated Bare Branding, a Community Interest Company.

On 17 June and 24 August 2020, Noel Spencer applied for support payments through the self-employed income support scheme (SEISS).

Later, in June 2021, HMRC sought to confirm his trading status for eligibility for the grants as his tax returns for 2018/19 and 2019/20 showed he had ceased self-employment on 5 April 2019.

Noel Spencer claimed he did not understand the difference between a sole trader and a community interest company and, unable to afford to check with his accountant, he concluded from his own research that he was eligible for payments under SEISS.

HMRC disagreed and issued:

- assessments to recover the grants paid;
- a 'penalty questionnaire' with a view to imposing non-deliberate penalties but had not yet issued any.

Noel Spencer appealed.

### *Decision*

The Tribunal stated that it did appear that Noel Spencer held a genuine belief that he was “carrying on the same trade under the auspice of Bare Branding”.

However, the reality was he was trading through his community interest company. Consequently, with no self-employed trade during the period 2018/19 to 2020/21, the First Tier Tribunal found that he was not eligible for payments under SEISS.

“we can make no findings of fact as regards the relevant issues for consideration such as ‘special circumstances’ (para 11 Sch 24 FA 2007) because the penalty assessment has not been raised, and the matter is not part of the present appeal.”

The appeal was dismissed.

*Noel Spencer v HMRC (TC08881)*

### **No substantial shareholding exemption**

*Summary - The substantial shareholding exemption (SSE) was not available on the disposal of a subsidiary which the taxpayer company had owned for only 11 months.*

M Group Holdings Ltd was wholly owned by one shareholder, Peter Jeffreys, and provided services to the NHS.

Peter Jeffreys wished to sell the company's business and undertook the following transactions:

1. The company incorporated a wholly-owned subsidiary, Medinet Clinical Services Ltd, and then transferred its trade and assets to it.
2. M Group Holdings then sold its shares in Medinet Clinical Services Ltd to a third-party purchaser.

M Group Holdings claimed that the gain arising from the sale was exempt under the Substantial Shareholding Exemption (SSE).

As M Group Holdings only owned Medinet Clinical Services Ltd for a period of just under 11 months, it relied on para 15A Schedule 7AC TCGA 1992. This allows for the ownership period to be treated as extended in certain cases where there has been a transfer of trading assets to the investee company (i.e., Medinet Clinical Services Ltd) within the 12 months before the disposal.

The First Tier Tribunal held that the extension did not apply because it applied only to any period in which the assets were held and used for the purposes of a trade by a company that was at the time of such use 'a member of the group'. As there had been no group prior to the incorporation of Medinet Clinical Services Ltd, there could be no extension.

The company appealed to the Upper Tribunal on three grounds:

1. It is possible to have a 'group' consisting of just one company, so that M Group Holdings could be considered to be part of a group before the incorporation of Medinet Clinical Services Ltd;
2. The clear purpose of the legislation was to apply the SSE where the economic ownership of the trade and assets had remained the same throughout the 12-month period and it should not be interpreted as requiring the corporate structure to have a particular form throughout;
3. Additional words should be read into para 15A to clarify that relief should be available by extending the period of ownership for periods in which the assets were used by the investing company. The company argued that it was an obvious mistake to discriminate against a standalone company compared to a company which already had a dormant subsidiary to which it could hive down the trade.

### *Decision*

On the first ground, the Upper Tribunal held that there was 'no merit at all' in this interpretation. The ordinary and natural meaning of 'group' required there to be more than one company in the group and this was consistent with the context and purpose of the relevant legislation.

On the second ground, the Upper Tribunal agreed with the First Tier Tribunal; the ownership period could only be extended for periods during which the assets were in use by a member of the group. The purpose of the legislation was to provide a benefit to groups of companies; the wording was entirely focused on groups and what was happening to assets used by group members when they were members.

On the final ground, the Upper Tribunal found that there was no mistake in the drafting which could be corrected in the manner argued by the taxpayer company. The legislation referred only to members of a group because Parliament intended it only to cover transfers within groups.

*M Group Holdings Ltd v HMRC [2023] UKUT 213 (TCC)*

*Adapted from the case summary in Tax Journal (8 September 2023)*

## **Standard rated cosmetic treatment**

*Summary – With insufficient evidence provided, supplies made by a clinic were found to be standard rated cosmetic services rather than exempt medical care.*

Eperm Limited carried out a number of skin related treatments including the removal of skin lesions, the treatment of varicose veins and the use of medical devices to treat other skin conditions.

The company argued that its supplies were exempt as these were provided by qualified and trained professionals in a medical centre and so were not subject to VAT.

Having failed to provide the requested three-year breakdown of services provided by 13 August 2010, HMRC compulsorily registered the company on 18 August 2010.

Eperm Limited subsequently submitted nil returns for the periods 02/11 to 08/12.

In May 2013, HMRC made a compliance visit to inspect the company's records. The company maintained its supplies were for the treatment of underlying medical conditions but also improved the clients' wellbeing.

HMRC believed that the company's procedures did not qualify as medical care (Item 1, Group 7, Schedule 9 VATA 1994) as the services did not protect, maintain or restore the health of an individual. Consequently, HMRC issued VAT assessments for the periods from 1 May 2007.

The company appealed.

#### *Decision*

The First Tier Tribunal stated that medical care means services provided to diagnose, treat or cure diseases or health disorders or to protect, maintain or restore health. Where treatment was for purely cosmetic reasons it was not classed as medical care.

The Tribunal observed that the company was not registered with the Care Quality Commission that oversees regulated medical care services. Although not definitive, the fact that the Care Quality Commission considered the company were not providing regulated services suggested the clinic was not providing medical care within the context of art 132 of the VAT Directive.

The Tribunal noted that the company's website made reference to 'medico beauty', with the company's intention being to 'bridge the gap between beauty salons and cosmetic surgery'. A significant proportion of the company's procedures were carried out for cosmetic purposes. Procedures to deal with wrinkles, cellulite and tattoos did not constitute medical care.

While the company may have made some exempt supplies of medical care, the company failed to provide evidence to support their claim. Consequently, all of the company's services had been correctly treated by HMRC as standard-rated supplies, its turnover exceeded the registration threshold, and the appeal was dismissed.

*Eperm Limited v HMRC (TC08865)*

### **Holiday cottage built for business purposes**

*Summary – Planning permission for the construction of a new cottage required the property to be used as a holiday cottage run on commercial basis, meaning it did not qualify for VAT recovery under the DIY Housebuilders scheme.*

Philip Spani built a cottage in Seaford, East Sussex and sought a VAT repayment totalling £13,048.28 under the DIY Housebuilders scheme.

In order to verify the claim, HMRC requested various pieces of information. Philip Spani supplied the requested information including the full Planning Permission documentation and Home and Contents insurance documents.

He explained that the Council would not have granted planning permission for the cottage had it not been as a holiday let due to the national park area that it was located in.

In August 2021, HMRC refused the refund claim on the basis that the property was let out on a commercial basis.

Philip Spani appealed to the First Tier Tribunal.

#### *Decision*

S.35 VATA 1994 contains a number of conditions to be satisfied before a refund can be made under the DIY Housebuilders scheme, one of which is that the works must not be carried out in the course or furtherance of any business.

Planning permission required the property to “be used for holiday accommodation” and use as a dwelling house was prohibited. Although letting had proved difficult due to COVID, the cottage was advertised on Airbnb and the home and contents insurance stated that tenant’s liability insurance was part of the cover.

The First Tier Tribunal found that Philip Spani was not eligible for the refund as the cottage was built in furtherance of a business.

The appeal was dismissed.

*Philip Spani v HMRC (TC08916)*

### **Financial hardship**

*Summary – With the company having ceased to trade and a bank statement showing no cash was available, the hardship application was allowed.*

In November 2019, after an enquiry, HMRC sent the company an assessment for £280,903 for deliberate inaccuracies on VAT returns for the periods September 2013 to September 2019, relating to underpaid output tax.

The company appealed and asked HMRC to postpone payment of the tax while the appeal process was under way. This was on the basis that payment would cause it to suffer hardship (VATA 1994, s 84).

HMRC refused the request, so the company appealed to the First Tier Tribunal.

#### *Decision*

The First Tier Tribunal noted that the legislation produced an 'all or nothing' outcome. The fact that some tax could be paid within the financial constraints of a business was irrelevant.

The judge referred to a previous case about hardship (*NT ADA Ltd (TC7161)*) and adopted that Tribunal's decision that he should consider only the taxpayer's 'immediately or readily available resources'.



For example:

- equity in a property would only be an 'available resource' if negotiations with, say, a bank were at an advanced stage to secure a loan;
- the potential sale of business assets was also dismissed, even if the assets were not being used in the business.

The onus was on the appellant to provide clear evidence that there was a case for hardship; a 'value judgment' would then be made on the basis of that evidence. The relevant date to assess the financial position was the date of the hearing.

The commercial reality was that the company had ceased to trade in January 2020 and a bank statement dated 1 July 2019 showed a cash balance of only £167.19. The judge described the company's financial position as 'parlous'. He said: 'It is not, therefore, so much a question of hardship. The company simply has nothing from which it can pay the VAT at stake in its appeal.'

The company's hardship appeal was allowed.

*Massala Exotic Ltd v HMRC (TC08862)*

*Adapted from the case summary in Taxation (10 August 2023)*