

Personal tax update (Lecture P1331 – 19.26 minutes)

Director's neglect led to NIC bill

Summary – HMRC demonstrated that the company's failing to pay NICs was attributable to the taxpayer's neglect. As the sole director during the relevant period, it was appropriate for the full amount payable to be collected through the Personal Liability Notice issued by HMRC.

During 2015 and 2016, David Howick became a director of several companies and by 2018 all of the companies were either in administration or being wound up. SP Surface Finishers Limited was one of these companies. It went into liquidation owing HMRC some £63,000 in National Insurance Contributions. As the sole director at the time, HMRC issued David Howick with a Personal Liability Notice to recover NICs due.

David Howick appealed to the First Tier Tribunal arguing that the company's failures to pay the sums due were due to his past ill health, a car accident and a lack of experience and commercial acumen.

Decision

HMRC needed to prove that:

- David Howick was an officer of the company at the relevant time;
- the NICs were not paid;
- the non-payment was due to David Howick's negligence.

The First Tier Tribunal found that David Howick had become sole director of SP Surface Finishers Limited, following the illness of its other director. It was from this point in time that payments to HMRC ceased. Management reports had made it clear to David Howick that no PAYE or NICs was being paid each month.

The First Tier Tribunal found that:

- his past ill health and a car accident had occurred well before him accepting his directorship;
- he had a history of business failures; and
- lack of funds was not a reason to allow an appeal against a Personal Liability Notice. Despite existing debt factoring facilities being available to help with cash flow issues, he chose not to use them.

The First Tier Tribunal found that David Howick's conduct had not been something that a reasonable and prudent man would do. The failure to pay HMRC was attributable to David Howick's negligence.

The appeal was dismissed.

David Howick v HMRC (TC08531)

Clawback of CJRS payments

Summary – CJRS claims for two workers were invalid as the employees were added to payroll after the qualifying date.

Carlick Contract Furniture Limited manufactured and supplied contract furniture to major high street pub, bar and restaurant groups.

The first full COVID lockdown was announced on 23 March 2020, with the hospitality sector closing down. The company was severely affected, being forced to close completely for two months, with all staff except the executive management team being furloughed. In order to survive, the company was forced to make 70 redundancies in two phases in June and October 2020.

The company normally runs its payroll on the 26th of each month, with cut-off three working days before that date. In February 2020 this date was Friday 21 February 2020.

Amanda Coleman and Andrew Boales were recruited by employment offer letters dated 18 and 19 February 2020 respectively, with the employment to commence on Monday 24 February 2020. This meant that they could not be included in the February payroll and so were first included on the 26 March 2020 payroll. The real time information submitted to HMRC in respect of this payment was actually included in a return made on 25 March 2020.

The company claimed CJRS for both from its commencement on 1 April 2020 until they were both made redundant on 23 October 2020.

HMRC assessed the company to repay the money as the employees had not been included in an RTI return made on, or before, 19 March 2020, a requirement for the claims to be valid. HMRC referred to a Press Release dated 15 April 2020 stating that the employees must both be employed by 19 March 2020 and must have also been notified to HMRC through RTI submission by that date.

The company appealed, stating that it had done its best to keep up with rapidly changing guidance and had acted reasonably in the spirit of how the scheme was intended to work.

Decision

The First tier Tribunal was sympathetic to the company's position but had no jurisdiction to make a decision other than within the letter of the law. The Tribunal was bound by the law, with no powers to determine whether an outcome was fair or not

The appeal was dismissed.

Carlick Contract Furniture Limited v HMRC (TC08543)

Applying the tax residence test

Summary – The taxpayer was UK resident for tax purposes in 2012/2013 as after ceasing full-time work overseas, he retained links to the UK under the pre-statutory residence test rules. As a result, he was UK resident under the statutory residence test in 2014/15.

Ernest Batten argued that he left the UK on 21 March 2010 to live and work in Gibraltar, ceasing to be UK resident as his relocation gave rise to a distinct break in the pattern of his life. He argued that he did not resume UK residence until 2015/16.

HMRC raised income tax and capital gains tax assessments for 2014/2015 on the basis that he was UK resident in that year. Under the statutory residence test (Schedule 45 FA 2013), his residence position for 2014/15 depended upon whether or not he was resident for the preceding three tax years.

It was common ground that he had two ties:

1. A family tie because his wife lived in the UK; and
2. An accommodation tie because he had a home available to him in the UK and he spent at least one night there.

HMRC accepted that Ernest Batten was not UK resident for the tax years 2010/11 and 2011/12 because he was working full-time overseas. Further, HMRC accepted that in 2013/14 Ernest Batten was non-resident because he only spent 87 days in the UK and as a result the number of ties required for UK residence exceeded his two ties. (Under paragraph 18 three ties were required and under paragraph 19 four ties were required.)

The issue to decide was where he was resident for 2012/13. It was agreed that his tax residence in that year depended upon the application of the pre-statutory residence test common law rules.

Decision

The First Tier Tribunal were satisfied that HMRC made the discovery that Ernest Batten was no longer employed full-time overseas. None of Mr Batten's returns had given any indication that his foreign employment had ceased in June 2012. In fact, his tax return for 2012/13 stated that he was still employed full-time overseas.

The First Tier Tribunal found that Ernest Batten made a distinct break from the UK in 2010/11 and as a result became non-UK resident in that year. Although Ernest Batten maintained numerous links to the UK, the First Tier Tribunal considered that the relocation to Gibraltar taken together with the circumstances of his new employment there, looking for opportunities to expand the care home business, gives rise to the necessary degree of change in the pattern of his life in the UK for a cessation of his settled or usual abode in the UK to have taken place.

However, from 2012/13 his employment in Gibraltar ceased and during that year he returned to the UK for 84 days, staying at the UK family home.

The First Tier Tribunal concluded that he was UK tax resident in 2012/13 stating that:

"When the multifactorial enquiry no longer takes into account full-time employment overseas and account is taken of the available accommodation ..., we consider that the result is that Mr Batten was UK tax resident. We consider that the distinct break came to an end in 2012/13."

At this time, he no longer intended to make Gibraltar his home. Although he spent the summer in Gibraltar, he spent the winter months away from Gibraltar. As the years passed, he returned more frequently to the UK and made a number of trips on Eurostar leaving London around 10.30 at night, arriving in Calais at midnight French Time (11:00 in the UK) and then returning to the UK on the train at 1.45 am. The First Tier Tribunal believed that this was to reduce his midnight count in the UK.

Under the rules preceding the statutory residence test, when the distinct break with the UK came to an end, Ernest Batten was UK resident in 2012/13. As a result, he was also resident under the statutory residence test in 2014/15. The income tax and CGT assessments were valid.

Interestingly, the First Tier Tribunal commented that it recognised that the application of the statutory residence test to 2012/13 would have produced a different result. However, the Tribunal went on to state that those rules were not applicable in that year and there was no basis on which the Tribunal could apply the statutory residence test retrospectively.

Ernest Batten v HMRC (TC08524)

No partnership, no tax relief

Summary – As no partnership existed, CGT and SDLT reliefs claimed on the disposal of a property being developed were denied.

In 1989, Richard Cooke and his wife bought Marepond Farm for just over half a million pounds.

In 1997 SC Properties Limited was incorporated, primarily as a property development company owned in equal shares by Mr and Mrs Cooke.

In September 2014, planning permission was obtained for the development of a property on the farm called Marepond Copse. Mr Cooke claimed that at that time the couple created a partnership called R & E Cooke Partnership to develop the property, and that the property was appropriated to trading stock of the Partnership.

SC Properties Limited undertook the development of the property using third party contractors. The Cookes granted SC Properties Limited the right to purchase the property for £830,000 by giving notice within 1 year, for consideration of £1.

In January 2016, Richard Cooke and his wife personally claimed Capital Gains Tax relief on the appropriation of the property which had previously been held as an investment to trading stock (s.161(3) TCGA 1992). This was sent in the Cookes' names using their tax references.

In June 2016, SC Properties Limited acquired the property for the agreed £830,000, when it was valued at just under £1.6 million. A joint election was made under s.178 ITTOIA 2005 to defer the profit on the sale of the property by the Cooke's to the company. This profit only crystallised when the company sold the property in March 2017 to a third party for £1,875,000.

Further, the couple claimed Stamp Duty Land Tax relief under the partnership SDLT provisions (Schedule 15 FA 2003). The transfer of the property from the Partnership to SC Properties Limited was free from SDLT because SC Properties Limited was owned by the same individuals who were members of the partnership.

The only issue in this case was whether the partnership actually existed. HMRC inquired into the Self Assessment and SDLT returns claiming that no partnership existed. HMRC argued that the Cookes had not provided evidence to suggest that the Partnership existed. The Partnership did not acquire the property and did not carry on a trade of developing the property. Indeed, HMRC pointed out that the Partnership was not registered with HMRC until February 2019, some time after the property transactions. On that basis, HMRC issued assessments denying the reliefs that had been claimed.

Decision

The First Tier Tribunal found that there was no partnership business. The partnership did not have its own bank account, it raised no invoices and had not registered for VAT. Further, neither the financing nor option agreements made any reference to the existence of a partnership.

The First Tier Tribunal found that the partnership returns that were filed could not be treated as evidence that the partnership existed.

The First Tier Tribunal agreed with HMRC that the evidence suggested that the intention was that any profit derived from the property development should accrue to SC Properties Limited and not to the partnership.

With no partnership, the partnership SDLT provisions did not apply and the CGT elections were invalid:

1. The property was not appropriated to trading stock of the partnership on 14 September 2014 or at any other date.
2. The property was owned personally by Mr and Mrs Cooke when it was sold to SC Properties Limited on 9 June 2016.
3. A chargeable gain arose on that sale, half of which was chargeable on Mr Cooke.

The appeal was dismissed.

SC Properties Limited and Richard Cooke v HMRC (TC08537)

Capital loss allowed

Summary – Despite no evidence that HMRC had been notified of a capital loss made in 1998, these losses brought forward were allowed as a deduction against gains made in 2014/15. However, the amount of the loss was reduced as it could not be justified by the taxpayer.

On 27 August 1998, Altan Goksu sold a property for £990,000 crystallising a capital loss. He claimed that his accountant assured him that he would declare the loss to the Inland Revenue.

Altan Goksu sold a commercial property in 2014/15 and sought to reduce the gain made by the capital loss made 1998.

HMRC argued that Altan Goksu could not use the loss as he had failed to notify it to HMRC within the time limits required (s.16(2) TCGA 1992).

Altan Goksu appealed on the grounds of reasonable care. Although not notified on his tax return at the time, Altan Goksu recalled that in a telephone call his accountant confirmed that he had had sent a letter notifying the loss to the Inland Revenue, although he could not remember whether he had received a copy. Neither party were able to produce a copy of this letter. However, during HMRC's enquiry, he produced a copy of a handwritten computation of the loss but this was barely legible.

Decision

The First Tier Tribunal heard from the accountant who stated that he remembered submitting the return and believed that the loss claim was made later, by way of amendment, as not all the details were available when the original return was submitted. The accountant described the process that his firm would have used to notify the loss, stating that it was normal practice to send revised computations to HMRC by letter. He had a reliable secretary and so it was very rare that letters went astray. On the balance of probabilities, the First Tier Tribunal found that the loss had been notified to HMRC. The appeals against the assessment and penalty were allowed.

However, as only a handwritten calculation was available, the First Tier Tribunal reduced the loss to a figure calculated by Altan Goksu's current accountants, based on the figures available at this later time.

Altan Goksu v HMRC (TC08536)