

## Personal tax round up (Lecture P1391 – 15.39 minutes)

### CJRS deadline missed

*Summary – With the employee concerned not appearing on an RTI submission by the 19 March 2020 cut-off date, HMRC's assessment to clawback the CJRS grant paid was valid.*

Mr Boddice was employed by Sentinel Fire and Security Systems Limited from 25 February 2020.

On 20 April 2020 the company submitted a claim for support payments under the Coronavirus Job Retention Scheme (CJRS) in respect of a number of employees including nearly £18,000 for Mr Boddice for the period March/April 2020 to January 2021.

Following a compliance check, HMRC raised an assessment for the amount claimed to be repaid on the basis that the employee had not appeared on an RTI submission on or before 19 March 2020.

The company paid employees on the last Friday of each month:

- The payroll for February 2020 was processed on or around 24 February 2020, so Mr Boddice did not appear on either the February payroll or the February RTI submission;
- The payroll for March 2020 included Mr Boddice's pay for the last few days of February and all of March, with the relevant RTI submission sent to and received by HMRC on 25 March 2020.

To be eligible for payments under the CJRS, an employee must have appeared on an RTI submission on or before 19 March 2020. Sentinel Fire and Security Systems Limited accepted that this was not the case for Mr Boddice but hoped that, on appeal, the First Tier Tribunal would overturn HMRC's assessment.

### *Decision*

As we have seen in recent months, the First Tier Tribunal can only make decisions based on legislation and has no jurisdiction to decide on matters of fairness.

With the 19 March 2020 deadline missed, the CJRS claims were not valid and the case was dismissed.

*Sentinel Fire and Security Systems Limited v HMRC (TC08849)*

### Invalid expense claims

*Summary – The taxpayer's expenses were denied as he could provide no supporting evidence to justify these sums. Penalties were correctly raised by HMRC on the basis of careless behaviour by the taxpayer.*

Mr Badjie was within the PAYE system for the tax years 2016/17 to 2019/20 and in his tax returns for these years he claimed expenses, representing between 50% and 60% of his income each year:

<u>Tax year</u>	<u>Travel and subsistence</u>	<u>Other expenses and allowances</u>
2017	£9,341	£3,278
2018	£11,752	£4,124
2019	£13,818	£4,848
2020	£13,291	£4,664

HMRC disallowed all these claims. HMRC issued closure notices and a penalty explanation letter on 5 August 2021 explaining that penalties totalling £1,952.94 were going to be charged on the basis that he had acted carelessly.

Mr Badjie claimed that he had not acted carelessly. He had relied upon his agent and had no knowledge of the expenses claimed on his behalf:

- he had not provided details of any expenses to his agent;
- he did not review his tax returns;
- the first that he knew of these claims was when HMRC told him;

HMRC argued that Mr Badjie was aware of the expense claims. During a telephone call with HMRC, he had informed HMRC that his brother had introduced him to an accountant who could get him a refund. On five occasions between June 2002 and April 2021, he had telephoned HMRC asking why his repayment claim had not been processed. HMRC claim that these calls indicated that he knew his accountant had claimed expenses on his behalf and, as a result, he was expecting a large repayment from HMRC.

#### *Decision*

The First Tier Tribunal agreed with HMRC stating that:

“He clearly knew that as a result of his expenses claims he was due a refund of tax even though he did not have any receipts to support his expenses claim.”

Further, he admitted to HMRC on 20 May 2021 that he had “told the accountant what he spent and left it to the accountant to complete the tax returns.” He clearly knew what was going on. He gave information to his accountant without any supporting documentation.

The appeal was dismissed and the penalties upheld.

*Bakery Badjie v HMRC (TC08840)*

## **Doctor's accommodation costs**

*Summary – Accommodation costs were incurred to put the taxpayer in a position to be able to perform his duties and were not incurred wholly, exclusively and necessarily in the performance of those duties.*

Jayanth Kunjur was a practising dental surgeon who lived in Southampton with his family. In order to qualify as a maxillofacial surgeon, he accepted a training position at St George's Hospital, Tooting, covering from 2012 to 2016.

In addition to his normal working hours, he was required to be on-call two nights a week and one weekend in six. When on-call he needed to be able to get to the hospital within 30 minutes and to have appropriate and reliable telephone connections to deal with on call telephone queries. Consequently, he rented accommodation near the hospital in Colliers Wood.

This appeal concerned expenditure which Jayanth Kunjur incurred on his living accommodation. He claimed these costs were allowable as they were incurred wholly, exclusively and necessarily in the performance of his duties.

HMRC disallowed the claim, arguing that the dentist's employment contract did not require him to rent premises close to the hospital.

The First Tier Tribunal found that Jayanth Kunjur was entitled to relief for a proportion of the expenditure by reference to the amount of time it considered that he spent at the accommodation performing relevant on-call duties.

HMRC appealed, saying the First Tier Tribunal had erred in law.

### *Decision*

The Upper Tribunal found that by renting his flat, Jayanth Kunjur was providing himself with somewhere to live during his working week. With his family in Southampton, he chose to pay for accommodation. If his family had lived locally, the claim would never have been made.

The Tribunal accepted that the premises were being used while he performed his duties but that this was not the same as incurring expenditure in the performance of those duties. The costs incurred were 'incidental expenditure' putting the surgeon in a position to be able to do the work he was employed to carry out.

The Upper Tribunal found that the First Tier Tribunal had erred in law by concluding that a deduction was allowable under s 336(1) ITEPA 2003. The costs incurred did not satisfy the 'wholly, exclusively and necessarily' test

HMRC's appeal was allowed.

*HMRC v Jayanth Kunjur [2023] UKUT 00154 (TCC)*

## **Domicile of choice and carelessness**

*Summary – The taxpayer had an English domicile of origin but during the relevant years had never had a domicile of choice in Connecticut.*

Mr Strachan's father was born in Scotland. Aged 21, he moved to England as a qualified doctor, retaining no property in Scotland. His children were born in Oldham. He remained in England until his death, when his probate certificate recorded him as domiciled in England and Wales.

Born in Oldham, Mr Strachan attended secondary school in Edinburgh, and cheered for Scotland, not England, when the two nations competed in rugby. Following a gap year abroad, he studied at Christ's College, Cambridge, followed by a Masters course at Princeton.

Between 1967 and 1985, Mr Strachan was married to an American. By 1971 he had become a US citizen, and subsequently obtained a US passport. During this time, he lived in New York, Texas, Japan and Thailand and Hong Kong. He bought a house in Texas in 1977 that was rented out when he was living abroad between 1975 and 1984. In 1983, having been left money by his aunt, he bought a property in London that he rented out. In 1984, he sold his Texas property and moved to New York, buying a property in Manhattan.

He separated from his wife in 1985 and remarried in 1987. He sold his New York property, but his second wife had a property in Connecticut. By September 1987 he had moved to London to take up a new post, working for Rio Tinto Zinc.

Mr Strachan's paid work came to an end by 2015, when he was 72. Despite this being an obvious point at which they could have returned to Connecticut, the couple remained living in England with "an active and full social and sporting life in London". The couple bought a property in Spain and one in Massachusetts, both of which were used for holidays.

Mr Strachan completed his UK tax returns for 2011/12 to 2015/16 on the basis that he was domiciled in Massachusetts. However, HMRC disagreed believing him to be UK domiciled and issued discovery assessments for the first four years, and an amendment for the fifth totalling some £420,000.

Mr Strachan appealed arguing that from 1987 he had a domicile of choice in the USA.

### *Decision*

The First Tier Tribunal confirmed that although Mr Strachan's father had been born in Scotland, giving him a domicile of origin in Scotland, he had moved to England when he was age 21, retaining no Scottish property and remained in England on retirement. His father's domicile of choice in England, meant that Mr Strachan's domicile of origin was England. Attending university in Scotland and supporting Scotland in Rugby matches did not change this. These were minor factors.

For Mr Strachan to have a domicile of choice in the USA the First tier Tribunal stated that the courts have repeatedly endorsed that a domicile of choice is only established if a person both:

- voluntarily fixes his "sole or chief residence" in a particular place; and
- does so with "an intention of continuing to reside there for an unlimited time".

Although the couple owned a property in Massachusetts, the couple had never lived there permanently, and this was not the place where they were "settled".

Based on the facts, Mr Strachan spent most of the year in England where he had worked. London was the centre of the couple's social life and where they kept their most valuable possessions.

With a UK domicile of origin established, Mr Strachan's appeals against the assessments for 2013/14 to 2015/16 were dismissed.

The Tribunal moved to consider whether the 2011/12 and 2012/13 discovery assessments were valid. The issue to decide was whether the loss of tax resulting from his incorrect Self Assessment returns had been caused by his carelessness.

The First Tier Tribunal found that he had acted carelessly by not checking advice claimed to have been given to him back in 1987, when he was told that his domicile of choice was Massachusetts. He was wrong to assume he was domiciled in Massachusetts and "given the very significant changes to his position" since that time, "the reasonable taxpayer in his position would have refreshed the advice he had taken over 25 years previously".

However, this did not necessarily mean that had he taken advice before filing these returns, that the advice would necessarily have been different. The Tribunal found HMRC was unable to prove that the loss would have been avoided had the taxpayer taken advice. Consequently, the appeal against the 2011/12 and 2012/13 assessments was allowed. The total amount payable was reduced by close to £100,000.

*Ian Charles Strachan v HMRC (TC08858)*

## **Ineffective home loan scheme**

*Summary – A house that the taxpayer continued to live in, having gifted it to an interest in possession trust in return for a promissory note, was taxable on death with no deduction for the debt.*

This appeal concerned the inheritance tax consequences of transactions implemented by Mrs Elborne in 2003 as part of a "home loan scheme". In summary this involved Mrs Elbourne:

- disposing of the house that she lived to the trustees of a settlement in which she had an interest in possession in exchange for a promissory note issued by the trustees;
- assigning of the promissory note by way of gift to the trustees of a family settlement in which her children had interests in possession, but which excluded her from benefiting; and
- continuing to live in the house rent-free until her death, more than seven years after the promissory note assignment had taken place.

The appellants argued that the inheritance tax consequences were as follows:

- Mrs Elborne's assignment of the promissory note to the trustees of the Family Settlement was a potentially exempt transfer, but as she survived seven years it never became chargeable;
- On Mrs Elborne's death, due to her interest in possession in the Life Settlement, the house was deemed to form part of her estate;
- A deduction should be allowed on her death estate for the amount owed to the trustees of the Life Settlement under the promissory note.

The net effect of all of this would be that the value of her house would not be liable to inheritance tax on her death.

HMRC disagreed and raised a notice of determination that included the value of the house but did not deduct of the amount payable under the promissory note.

#### *Decision*

Despite various defects in the supporting documentation, including the order in which documents were signed, the First Tier Tribunal concluded that none of these caused the scheme to fail.

The Tribunal agreed that the house formed part of her death estate.

However, the promissory note was not deductible as under s.103 FA 1986, the debt must be abated by the value of the consideration given by Mrs Elborne at the time when the promissory note was issued.

That value was the value of her house when it was put into trust, meaning that the remaining debt available for deduction on death was zero.

The scheme failed and the appeal was dismissed.

*The Executors of Mrs Leslie Vivienne Elborne and others (TC08863)*

### **Residential SDLT despite sheep grazing**

*Summary – A property with two Land Registry titles was found to be liable to SDLT residential rates as sheep grazing in a field was not carried out on a commercial basis. Multiple Dwellings Relief was denied as no claim was made within the statutory time limit.*

In January 2019, James Gibson bought a property, Doe Bank Manor, for £1,595,00, which he had been occupying with his family since 27 November 2018.

The property had two Land Registry titles:

1. WK425880: a six-bedroom house, garage with an 'office/studio', self-contained barn, an outbuilding and a 0.5 acre market garden;
2. WK426348: a field/paddock where, for the previous four years, farmers had used the land but for no consideration. With the land used for summer grazing, there were no sheep on the land at the time of purchase.

An SDLT return was filed on the basis that the property transaction was "mixed-use" and the total amount of tax due was calculated at £69,500. No claim for Multiple Dwellings Relief was made in respect of the house and barn.

On 30 November 2020, HMRC issued a closure notice concluding the property purchase was residential and that higher rates of SDLT applied, increasing the SDLT payable by £83,500 to £153,000. Multiple Dwellings Relief was denied as over a year had passed since the original SDLT return had been filed, meaning it was too late to amend return.

Following a statutory review, on 24 January 2022, James Gibson appealed to the First Tier Tribunal.

### *Decision*

The land had not been used for commercial agricultural purposes since 2003. What had once been a working farm had been converted under residential planning permission into a family home with 'far reaching views.'

The First Tier Tribunal found that the property was sold as one lot, with the two parcels of land purchased so as to provide an appealing country residence. The paddock did not convert the property to mixed residential and non-residential use.

The claim for Multiple Dwellings Relief was not made within a land transaction return or in amendment to a return within 12 months after the filing date. Having failed to amend the SDLT return to include a claim for Multiple Dwellings Relief within the statutory limit, the relief was denied.

*James George Gibson v HMRC (TC08869)*