

Capital taxes update – December 2024 (Lecture P1467 – 15.38 minutes)

Exit tax legislation and EU law

Summary – When the taxpayers moved their tax residence abroad, the First Tier Tribunal was able to use a 'conforming interpretation' of UK law to retrospectively insert a five-year payment deferral rule, so making the exit charges lawful under EU law and its principle of 'freedom of establishment'.

In this appeal, the Upper Tribunal considered two joined appeals against First Tier Tribunal decisions concerning the “exit tax” that arises on a deemed disposal when the trustees of a settlement or a company cease to be resident in the UK for the purposes of taxation:

1. Four accumulation and maintenance trusts established for family members replaced UK trustees with new trustees, all of whom were resident in Cyprus. Only the UK corporate trustee remained.
2. Redevco Properties UK1 Limited moved its place of effective management to the Netherlands.

Under UK law, an exit charge arose because the trust and company's assets were treated as being disposed of on migration and then immediately reacquired at market value. The issue was whether this charge was contrary to EU law and its principle of 'freedom of establishment'.

In September 2017, the CJEU had ruled that an exit charge was compatible with EU law provided payment by instalments over five or ten years was allowed. Where no deferral option existed, it was unlawful.

The First Tier Tribunals had decided that a conforming interpretation could be adopted but the taxpayers disagreed and appealed, arguing that it was not possible to apply a conforming interpretation, and effectively re-write UK tax law, without transgressing the boundary of statutory interpretation. Such statutory amendment should be reserved for Parliament only and so the exit charge provisions should be disapplied.

Decision

The Upper Tribunal stated that the breach of EU law rights arose, not because of the imposition of an exit tax, but rather because UK law failed to allow a deferral of the payment of that liability.

The Upper Tribunal decided a conforming interpretation of s.59B TCGA 1992 for the trustees and s.59D for companies was permitted to give effect to the taxpayers' EU law rights. Under a conforming interpretation, the law should be read as including an option to defer payment of the exit tax in five equal annual instalments, with the first instalment payable on the normal due date and at yearly intervals thereafter. Such an interpretation provided the “best fit” with EU law requirements and the will of UK Parliament by preserving the integrity of statute law as far as possible. The Upper Tribunal stated that a deferral period of five years was consistent with the CJEU's decision in *DMC (Case C-164/12)*.

Referring again to *DMC*, where the CJEU stated that interest may be charged in accordance with the applicable national legislation, the Upper Tribunal found that the First Tier Tribunal had made errors of law in reaching its decision regarding interest not to be paid as part of the conforming interpretations. T

he Upper Tribunal re-made the First Tier Tribunal's decisions, adopting the conforming interpretation to include deferral of the charge, and finding that interest should be governed by the usual statutory provisions.

The appeals were dismissed.

The Trustees of the Panico Panayi Accumulation and Maintenance Settlements Numbers 1 to 4 and another v HMRC [2024] UKUT 00319 (TCC)

IHT on Maltese property

Summary – With deemed domicile in the UK, the taxpayer was liable to IHT on his share of Maltese properties to which he had beneficial entitlement.

Martin Falzon, who was born in Malta, died in April 2025, having been resident in the UK for 37 years up to the date of death. As he had been resident in the UK for at least 17 out of the last 20 years before death, he had been found to be deemed domicile for UK tax purposes and so liable to IHT on his worldwide assets.

Following his parent's death, he had inherited a 1/6th share of properties located in Malta.

HMRC issued a determination that the foreign properties formed part of his estate and was liable to IHT but Marisa Lincoln, the executrix of his estate, disagreed and appealed to the First Tier Tribunal.

Marisa Lincoln's main argument was that it was not appropriate to apply the provisions of IHTA 1984 in this case, as these were designed to apply to UK situs property. Such provisions were unsuited to apply to property located in Malta as such property was governed by a very different legal code. She stated that applying IHTA 1984 to this case was like "trying to eat soup with a fork".

She also argued that Martin Falzon was not beneficially entitled to the properties so they did not form part of his estate (s.5 IHTA 1984).

Decision

The First Tier Tribunal stated that the issue of domicile was not relevant to this appeal, as it had already been settled by an earlier determination, which was not successfully appealed in time.

The First Tier Tribunal stated that it was bound to apply the law as Parliament has enacted and disagreed that IHTA 1984 did not contemplate situations where property was located overseas. S.43 IHTA 1984 makes it clear that UK legislation applies to property governed by non-UK law.

The First Tier Tribunal found that Martin Falzon had beneficial entitlement to the foreign properties. It was clear from the expert evidence on Maltese law that Martin Falzon enjoyed "full ownership of his share from the entire estate" and could "dispose of it", subject to the right of pre-emption.

This was confirmed by wording made by Martin Falzon in a special power of attorney where he referred to "the properties I have inherited". He believed that he enjoyed beneficial entitlement to the foreign properties. Finally, rent control restrictions did not deprive him of beneficial entitlement but simply diminished the value of his entitlement.

The First Tier Tribunal did not consider the foreign properties formed "settled property". Under Maltese law, there was no evidence of a trust existing or any intention to create such a trust.

The First Tier Tribunal stated that the number of legal owners of land in England is restricted to four people, but in this case, there were six beneficial owners. Consequently, when tested under UK law, there would have been a trust in respect of the land under Law of Property Act 1925 and Trustee Act 1925. However, the First Tier Tribunal concluded that such a trust did not meet the definition of settlement in s.43(2) IHTA 1984. The properties were not held in trust for persons in succession or for any person subject to a contingency. Martin Falzon had an absolute beneficial entitlement, including a beneficial entitlement to income as it arose.

The appeal was dismissed

Marisa Lincoln as legal personal representative of Martin Falzon v HMRC (TC09306)

IHT implications under Forfeiture Act

Summary – With the Forfeiture Act disapplied, the taxpayer was entitled to receive his wife's estate and no IHT was payable.

Philip and Myra Morris had married in their 20s and had a long, happy and loving marriage into their 70s.

In 2021, Myra was diagnosed as suffering from a rare neurological degenerative disorder that was incurable.

Her health progressively deteriorated, he finally agreed to accompany her to a clinic in Switzerland, where she died in December 2023, having self-administered an overdose. All of the evidence supported the fact that Philip was unhappy about his wife's decision and at no point encouraged her to end her life.

On returning to the UK Philip reported what had happened to the police and explained that he had a whole dossier of documents explaining everything, including various statements from Myra, her solicitor and him. The police confirmed in writing that there was no case to answer.

Under UK law, assisting a suicide is unlawful killing and the Forfeiture Act 1982, applies meaning that Philip Morris could not inherit from his wife's estate.

Consequently, Philip Morris applied under s.2.2 of that Act for relief modifying the effect of the forfeiture rule, and so allowing him to inherit.

Decision

The court stated that if the Forfeiture Act had applied to disinherit Philip Morris from inheriting, his wife's estate would have passed to their children and the estate would have been chargeable to IHT.

However, if the rule could be disapplied, his wife's estate would pass to him and there would be no IHT payable.

The court confirmed that, given the combination of Myra Morris' determination to proceed and Philip Morris' reluctant willingness to assist, confirmed that the assistance he gave could not be characterised as encouragement.

The court confirmed that the police had found that there were no grounds for further investigation and that it was not in the public interest for there to be a prosecution.

The court was in no doubt that the Forfeiture Act should be disapplied and that Philip Morris should inherit his late wife's estate.

This could be a very important decision in light of the Assisted Dying for Terminally Ill Adults Bill currently going through Parliament.

Morris v Morris and others [2024] EWHC 2554 (Ch)

Building “suitable for use as a single dwelling”

Summary – Despite substantial repair and renovation work being undertaken prior to occupation, the property was suitable for use as a dwelling when bought and so the residential rates of SDLT applied.

In 2019, Amarjeet and Tajinder Mudan bought a property in London and paid SDLT on the purchase on the basis that it was residential property.

The married couple subsequently claimed a partial repayment of the SDLT on the basis that the property was not “suitable for use as a dwelling” at completion and required substantial repair and renovation work before they could move in May 2020.

The repair and renovation work included rewiring, installing a new boiler, having a new roof, repairing broken windows, gutting the kitchen and clearing rubbish.

Following an enquiry, HMRC issued a closure notice, concluding the property was residential property.

Amarjeet and Tajinder Mudan appealed but the First Tier Tribunal dismissed the appeal, finding in HMRC’s favour.

The couple appealed to the Upper Tribunal, arguing that the correct test was whether the building was suitable for occupation as a dwelling on the effective date.

Decision

The Upper Tribunal stated that case law provided that simply looking at the property as a 'snapshot of habitability' at the effective date was not the correct approach to take. It was important to consider the fundamental characteristics and nature of the building over a period of time.

Adopting a multi-factorial approach, the Upper Tribunal stated that there were several points that needed to be considered when deciding what was meant by the words 'suitable for use as a dwelling'.

These included:

- Had the building been used previously as a dwelling?
- Was the property dilapidated but structurally sound, or was it 'an empty shell with no main roof'?
- Was the building work undertaken to make the property a pleasant place to live? If so, they would not affect suitability for use as a dwelling.

- Without the work being done, was the property too hazardous for the building to be suitable as a dwelling?

The Upper Tribunal decided that although the First Tier Tribunal had made reference to building work which was 'significant', it had made no error of law. It was clear that the property had been and still was suitable for use as a dwelling, and just required some repairs.

The appeal was dismissed.

Amarjeet Mudan and Tajinder Mudan v HMRC [2024] UKUT 00307 (TCC)

Denial of overpayment claim

Summary – HMRC were correct to reject the taxpayer's claim for SDLT overpayment relief as the overpayment resulted from a mistake in a claim for multiple dwellings relief.

On 15 April 2019, BTR Core Fund JPUT acquired the leasehold in a property in Manchester. The Property consisted of 350 "build to rent" flats and unlet commercial premises on the ground floor, intended to be let to the separate operators of a coffee shop and a cookery school.

BTR Core Fund JPUT submitted an SDLT return, claiming multiple dwellings relief, calculating the SDLT due in accordance with HMRC's internal manual guidance at the time, that the calculation should use the higher residential rates.

Following a change in HMRC's internal manual guidance, it became apparent that the calculation could apply the standard rates. However, the taxpayer was then out of time to amend its return. Consequently, it made an overpayment claim under Sch 10 para 34 for approximately £3 million, on the basis that there was an error in the previous SDLT calculation.

HMRC repaid the sum claimed, with interest but on 25 March 2022, following a check into the overpayment relief claim, HMRC issued a closure notice to recover the sum claimed. HMRC accepted that the SDLT return contained a mistake and that the taxpayer had overpaid tax. However, HMRC considered, that they were not liable to repay the overpaid tax because the overpayment was by reason of a mistake in a claim (FA 2003 Sch 10 para 34A(2) Case A).

Following a review, BTR Core Fund JPUT appealed to the First Tier Tribunal, arguing that the legislation makes a clear distinction between a relief, and a claim for relief. Their mistake was not in the making of a claim, which was simply an administrative or mechanical process. The mistake was in the calculation of the tax chargeable, which was not part of that process. The only legislative requirement for a valid claim was that it had to be included in an SDLT return, and the taxpayer had complied with that requirement.

Decision

The Tribunal stated that the question of whether a person is entitled to a relief is separate from the process by which that relief may be claimed. Entitlement to relief was not in question. The issue that needed to be decided was concerned purely with statutory interpretation of the claim itself.

The First Tier Tribunal stated that s.58D(1) and Sch 6B provide for relief from SDLT in the case of transfers involving multiple dwellings:

- Sch 6B describes the transactions to which Multiple Dwellings Relief applies;

- Sch 6B also details how the SDLT payable is to be calculated if a claim for relief is made;
- S.58D(2) states that Multiple Dwellings Relief will only apply if it is claimed and that claim must be made in an SDLT return, or in an amendment of an SDLT return.

In this case, the First Tier Tribunal found that even if it was correct to characterise a claim as an administrative or mechanical process, that process included entering a figure for the SDLT payable, a number that was calculated using the Multiple Dwellings Relief rules.

As that calculation included a mistake and was included in the claim, the claim for Multiple Dwellings Relief in the return was also mistaken.

The fact that the calculation was not made within the SDLT return does not prevent the result of that calculation from being mistaken when it is entered into the return.

By entering the result of the calculation in the return, the taxpayer was 'particularising the exact sum which it had to pay'.

The appeal was dismissed.

BTR Core Fund JPUT v HMRC (TC09305)

Note: In this case, the two judges came to different views, with the casting vote taken by the presiding judge who agreed with HMRC.

Fields with a mowing licence

Summary - Despite being used commercially for grass production under licence to a third party, substantial fields were found to be part of the grounds of a residential property.

In February 2022, Mike Lazaridis paid £10,750,000 for a freehold estate of a property in Hertfordshire. The sales brochure described the property as an “exceptional Nash style villa with three cottages set in a mature parkland estate of 106 acres”. To the rear of the house was a 40-acre area known as the 'fields'.

Mike Lazaridis submitted his SDLT return on the basis that the property was mixed-use. However, HMRC disagreed stating that the ‘fields’ formed part of the grounds of the house and that the property was entirely residential. HMRC concluded that Mike Lazaridis owed an additional £1,214,250 in SDLT.

Mike Lazaridis appealed, arguing that the fields were not 'grounds' of the house, as they served, and continue to serve, a commercial purpose, unconnected with the house. At the time of purchase, a mowing licence was in place under which a company was entitled to take away grass cuttings from the field once or twice a year for a fee of £35 per acre.

Did this activity mean that the conditions for the mixed-use rate of SDLT applied?

Decision

The First Tier Tribunal found that the property had been marketed as a villa with three cottages in a mature parkland estate. The fields were close to and partly visible from the house, enhancing its rural character and were proportionate to the property's size.

Under the grass cutting licence, Mike Lazaridis retained access to the fields and could have terminated the licence with minimal consequences as the licence was renewable annually. Cutting took place just twice a year but ensured that the fields were well-maintained and remained in good condition. The licence fee was negligible compared to the property's value.

The First Tier Tribunal found that the property was not marketed as including any land in commercial use, but rather the fields were included under 'gardens and grounds'.

The appeal was dismissed.

Mike Lazaridis v HMRC (TC09321)

Pre-completion works

Summary - The contract had not been substantially completed before the purchase. The assignment of rights to the company, the ultimate purchaser, meant the taxpayer was taxed as the purchaser in a notional transaction under the sub-sale rules and the company was taxed on its actual purchase.

Mr Goldsmith entered into a contract to buy a London property on 19 April 2018 for £1,450,000. The completion date was 24 May 2018.

The Property was a run-down, four-bedroom, semi-detached house which was to be converted it into three self-contained flats to let out. A clause was inserted into the contract allowing Mr Goldsmith to access the property between exchange and completion to carry out certain works, within limited hours. The keys needed to be handed back at the end of each day. Far more work was actually done than contractually permitted, which included structural changes to create the three flats.

G Goldsmith Limited was incorporated on 24th May 2018 with Mr Goldsmith as the sole shareholder and director.

On 31 May, Mr Goldsmith assigned the purchase contract to the company and the company completed the purchase on 5 June 2018, submitting and paying SDLT of £132,250, later claiming Multiple Dwellings Relief, with £46,252 SDLT refunded by HMRC.

Later, following an enquiry, HMRC issued a closure notice refusing the Multiple Dwellings Relief claim on the basis that the contract had been substantially performed on 20 April 2018.

Further, during the course of the enquiry, HMRC established that the contract for purchase had not been signed by the company but by Mr Goldsmith and that he should have paid SDLT on the property. HMRC issued a discovery assessment to Mr Goldsmith, assessing SDLT of £132,250 on the basis that there had been an "assignment of rights" under schedule 2A and/or substantial performance triggering completion under section 44.

Both the company and Mr Goldsmith appealed.

Decision

The First Tier Tribunal was in some doubt as to exactly what work had been completed but concluded that there had not been substantial performance. The Tribunal stated that substantial performance:

“...requires the buyer to go into occupation of the property as if they had become the owner at that point. They may have to comply with conditions or limitations under the contract, lease licence or other agreement, but there must be an element of freedom to occupy as and when they wish, including all the time, a right to any rents from the property if relevant (specifically dealt with in section 44(6)(a)) and generally, responsibility for the property and liability for the outgoings. As HMRC puts it in its SDLT Manual, the purchaser obtains “the keys to the door” and is entitled to occupy the property”.

The First Tier Tribunal also confirmed that the transfer of the contract to the company had given rise to two charges:

1. one on the individual in respect of the transfer; and
2. one on the company in relation to the actual purchase but that Multiple Dwellings Relief was available.

Although sub-sale relief could have been claimed on this double charge, Mr Goldsmith had not applied for the relief, being unaware of the issue.

G Goldsmith Limited and Mr Gia Goldsmith v HMRC (TC09323)