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Practical TAX Newsletter

Loans from close companies

Donald Drysdale highlights new tax-raising measures.

Already a trap for the unwary

Many small companies are not very good at keeping their financial affairs separate from those of their proprietors.

Owner-managed companies are generally 'close companies' as defined in CTA 2010, s 439 et seq. Broadly, a 'participator' is a person who has a share or interest in a company, and a close company is a company controlled by five or fewer participators or any number of directors who are participators. All my subsequent references are to CTA 2010 unless otherwise stated.

If in an accounting period a close company makes a loan or advance to a 'relevant person' who is a participator or an associate of a participator, other than in the ordinary course of a money-lending business or in certain other excepted circumstances, the company must pay tax at 25% on the balance of loan or advance still outstanding nine months after the end of the period (CTA 2010, s 455, formerly ICTA 1988, s 419). This tax charge is intended to deter close companies from making untaxed loans to participators rather than paying them taxable remuneration or dividends. If the loan is subsequently repaid or released, the company can claim relief under s 458.

Where records fall short, or where proprietors are unfamiliar with tax law, it is common to find that loans or advances have been made inadvertently to participators, thereby incurring tax liabilities under s 455. This is a trap waiting to catch close companies, and a scenario familiar to many tax practitioners.

This is a trap waiting to catch close companies.

Existing tax planning and avoidance

Before Budget Day (20 March 2013), a relevant person could be an individual, or a company receiving a loan or advance in a fiduciary or representative capacity. Close companies loans to partnerships in which all the partners were individuals and at least one was a participator were also caught, except loans to Scottish partnerships which escaped because of their separate legal persona. Tax planning to avoid the charge became commonplace, and provisions were introduced to prevent avoidance, for example, through the use of indirect loans and insertions of a non-close company into the structure.

A common tax planning ploy has been to avoid the tax charge by repaying the loan before the end of the nine month period, followed shortly by a fresh loan on similar terms. The government claims that avoidance arrangements have become more aggressive; seeking to use loopholes in the legislation by routing loans and other payments to participators through intermediaries such as limited liability partnerships (LLPs), partnerships and trusts in which the close company and at least one participator in the close company are members, partners or trustees.

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New anti-avoidance measures

The Budget announced new measures that took effect from 20 March 2013, subject to Royal Assent of the Finance Bill 2013. These new provisions are explained in a technical note from HMRC (see www.lexisurl.com/ccloan). There are three main threads to the changes.

Arrangements involving intermediaries

Where a close company makes a loan to an LLP or another type of partnership, in which at least one partner is an individual who is a participator or an associate of such a participator, the company will be subject to tax under s 455. Likewise, s 455 will apply where there is a loan or advance to trustees of a settlement in which at least one trustee or beneficiary (or potential beneficiary) is a participator or an associate of such a participator, see example 1.

Example 1

P, an individual, is a participator in close company A Ltd. P and A Ltd become partners in an LLP.
A Ltd makes a loan to the LLP.
Analysis: Close company A Ltd has made a loan to an LLP in which there is an individual partner who is also a participator in the close company, so a tax charge arises under s 455 – unless any specific exemption applies.

Example 2

Q, an individual, is a participator in close company B Ltd. Q and B Ltd are partners in a partnership. Under the partnership agreement, 80% of the profits are allocated to B Ltd and charged on B Ltd at the corporation tax rate. B Ltd leaves its profits undrawn on capital account in the partnership and Q draws on them.
Analysis: There is a benefit conferred on Q because:

- Q has received funds from B Ltd, a company in which Q is a participator; and
- there was no s 455 charge on B Ltd and no income tax charge on Q.

If the funds had been transferred directly from B Ltd to Q, they would have been chargeable to income tax (if transferred as remuneration or a dividend) or s 455 (if transferred as a loan).

Arrangements conferring benefit on a participator

New ss 464A and 464B are introduced into CTA 2010 to address arrangements under which value is extracted from a close company and the benefit is (directly or indirectly) conferred on an individual without income tax or s 455 tax arising. In these circumstances new s 464A imposes a new tax charge similar to that under s 455. New s 464B provides relief to the company if, after tax is paid under s 464A, a return payment is made to the company in respect of the benefit and no consideration is given for the return payment, see example 2.

Example 3

R, an individual, is a participator in close company C Ltd. During C Ltd's accounting period to 31 March 2013, R borrows £15,000 from C Ltd. If the loan is not repaid by 1 January 2014, C Ltd must pay tax of £3,750 (25% of £15,000) under s 455.
On 1 December 2013, C Ltd declares a dividend of £9,000 on which R is chargeable to income tax, and R uses this sum to repay £9,000 of his loan. On the same day R repays the remaining loan balance of £6,000. On 10 December 2013, R borrows £3,500 from C Ltd. On 15 December 2013, R borrows a further £1,500 from C Ltd.
Analysis: Of the £15,000 loan, £9,000 was repaid (by way of the application of a taxable dividend), leaving a balance of £6,000 outstanding. R repays the £6,000 (ie £5,000 or more). Within the next 30 days, R redraws £5,000. This is less than the £6,000 repaid, so the redrawn sum is used in determining the amount of relief denied under s 464C.

Example 4

S, an individual, is a participator in close company D Ltd. During D Ltd's accounting period to 30 June 2013, S borrows £50,000 from D Ltd and places this on bank deposit. S is due to make a mortgage repayment of £35,000 on 31 January 2014.
On 14 December 2013, S uses his £50,000 bank deposit to repay the loan to D Ltd, in an attempt to avoid the s 455 charge on D Ltd. S needs £35,000 and knew he was going to need it for his mortgage; on 30 January 2014 (i.e. more than 30 days after repaying his £50,000 loan), he borrows £35,000 from D Ltd to make the mortgage payment.
Analysis: At the time S made the £50,000 repayment, he intended to redraw £35,000 to pay the mortgage, so relief on £35,000 is denied under s 464C.

Restrictions on relief

New restrictions apply to relief otherwise available to companies under s 458 and new s 464B. New ss 464C and 464D are introduced into CTA 2010 to deny relief if, within a 30-day period, repayments of £5,000 or more are made to the close company in respect of a loan or advance taxable under s 455 or an extraction of value taxable under new s 464A, and amounts of £5,000 or more are then redrawn either through a loan or advance or through an extraction of value, see example 3.

Even where this 30-day rule does not apply, relief will be denied if there are outstanding amounts (loans, advances or extractions of value) of at least £15,000 and at the time of a repayment there are arrangements, or an intention, to redraw an amount, either through a loan or an extraction of value and an amount is subsequently redrawn, see example 4.

Conclusion

Tax practitioners and their close company clients need to be aware of these new provisions, which are complex and create new traps. You should take particular note of the fact that they are already in effect.

Close companies that fail to take appropriate care, or sail too close to the wind, can expect to pay more tax under s 455 or the new s 464A, and relief may be restricted under the new s 464C. The new measures are expected to bring an additional £70 million into the Exchequer each year. Looking ahead, there are to be consultations on aspects of partnership tax (see news section), so more changes may be on the way in Finance Bill 2014. **TPT**

Donald Drysdale

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How to make an effective gift

Emma Hunt explores how gifts are recognised for IHT.

In February 2013 it was revealed that the IHT threshold would be frozen at £325,000 until at least 2019. What has become apparent as a result of this announcement is that IHT will continue to be a concern for many families and individuals.

One of the most effective ways to reduce an IHT liability is to make lifetime transfers. Considerable care needs to be taken around lifetime giving to ensure the gift does not unexpectedly come back into an individual's estate on death.

Potentially exempt transfers (PETs)

You will be aware that, other than where the spouse exemption applies, a lifetime gift can be made by one individual to another with no IHT being due provided the donor survives seven years from the date of transfer. This assumes that the gifts are all effective for IHT purposes, I shall explore later in this article circumstances when it won't be.

It's also worth noting that even if the individual is not expected to survive seven years, if they survive over three years, taper relief will reduce the amount of IHT the estate has to pay so the gift may still be worth making. Additionally, don't forget that it is the value of the asset at the date of the gift that falls back into charge, so any increase in value will normally fall outside of the estate.

Some types of gift are immediately exempt from IHT and do not require the donor to survive seven years. Whilst the total amount of the gift is in some cases a nominal sum, full advantage should still be made of these exemptions, where possible.

Gifts of £3,000

Each tax year individuals can gift £3,000 of their estate with no IHT implications. Any unused allowance can be carried forward and utilised in the following tax year.

If there is more than one gift made in a tax year, the allowance must be used against the earlier gift first. If there is more than one gift made on the same day, the exemption is apportioned between the same day gifts accordingly. When determining as to how the annual exemptions are utilised, the current year's allowance is utilised in priority to the unused allowance from the previous tax year.

Small gifts

Gifts up to the value of £250 can be given away to any number of individuals in each tax year.

Wedding/ civil ceremony gifts

In order for these gifts to be effective, the gift has to be made on or shortly before the wedding/civil ceremony. There are prescribed limits as to the amount that can be given dependant on the relationship between the donor and the donee.

Gifts to spouse/civil partner

Transfers between spouses/civil partners are exempt provided both are domiciled in the UK, or has elected to be domiciled in the UK (FB 2013, cl 175).

It is still possible to make an exempt transfer if the individuals are legally married but separated at the date of gift. If the individuals are divorced at the date of transfer or living together but not lawfully married (regardless of the length of relationship) the transfer will be a PET rather than an exempt transfer. Note that the rules regarding separation and divorce are slightly different in respect of capital gains tax.

> *One of the most effective ways to reduce an IHT liability is to make lifetime transfers.*

Gifts out of income

Whilst the above exemptions for gifts to those other than a spouse/civil partner are nominal amounts, an exemption which can make a substantial difference is the gifts out of surplus income exemption (IHTA 1984, s21).

In order to claim this relief the gift must:

- form part of normal expenditure;
- be out of income; and
- not impact on an individual's standard of living.

HMRC will examine whether a pattern of gifts can be established which will include reviewing frequency and amounts, the nature of the gifts, the identity of the donees, and the reasons for the gifts.

In *Bennett v IRC* [1995] STC 54, the judge confirmed that the existence of a settled pattern could be established in two ways:

1. examination of the transferor's expenditure over a period of years to reveal a pattern; or
2. the individual may be shown to have assumed a commitment, or adopted a firm resolution, regarding their future expenditure and then complied with it.

It may therefore be possible for a single gift to qualify if it is or is intended to be the first of a pattern and there is evidence of this. It is strongly recommended that a letter of intention be drafted by the donor to the donee to notify them of their intention to make on-going gifts to them. The letter does not need to establish a fixed sum payable each year, it should just set out the intention that if there is surplus income, a gift will be made to the extent that it does not impact on the donor's standard of living.

Nil rate band trusts

As you may be aware, the use of a nil rate band is extremely tax efficient for lifetime giving. A settlor can transfer a sum equivalent to their available nil rate band (currently a maximum of £325,000) into a trust and no IHT will be payable on the initial settlement.

For individuals, once the seven-year period has elapsed, the initial transfer into a trust will fall outside their estate for IHT purposes. A couple could therefore, transfer up to a further £650,000 seven years later, again without any IHT charge.

If this is done on a continuous seven-year basis, this could dramatically reduce a couple's chargeable estate. The use of trusts has additional benefits such as having the control to only pass ownership over to children when they are mature enough to use the money wisely. If parents were to make a simple PET, the children would have the immediate benefit of the cash or control of the asset concerned.

Gift coming back into charge

For a gift to be effective, an individual must not continue to benefit from an asset that has been gifted. If they do so, this is a 'gift with reservation' (GWR) and will still be in their estate for IHT purposes, regardless of whether the gift was made more than seven years beforehand.

HMRC advises that if either of the following requirements are not satisfied, there is a GWR:

- the donee assumed bona fide possession or enjoyment; or
- the donor was entirely excluded or virtually excluded from use of the asset.

Table 1	
1	The donor can stay in the property for a maximum of two weeks when the donee is not there or up to a month in the property with the donee.
2	The donor can make social visits to the property as a guest of the donee. The level of visits should not be any more than the donor might be expected to make in the absence of any gift made by the donor.
3	A temporary stay to the house is allowed when either party is convalescing after medical treatment.

There is no statutory definition of "virtually excluded", but in practice where a property is gifted, the examples in table 1 should not result in GWR rules coming into force.

It would be also be advisable for the donor to not have keys to the property once gifted. Whether or not they are ever used is not the issue, the fact that the donor could access the property at any time may result in the GWR rules coming into force and this would call into question the basis on which the gift had been made in the first place.

If a donor does end up staying in the property for longer periods than detailed in the examples in table 1, the GWR rules could result in the property falling back into his estate on death. The only way to avoid this would be to pay full market rent for the period occupied, to the donee. This would be taxed as rental income in the hands of the donee but would ensure that the property does not fall foul of the GWR rules.

The rules regarding separation and divorce are different in respect of capital gains tax.

GWR – a recent example

In *Matthews v HMRC* [2012] UK FTT 658, a mother transferred a sum of money from an account in her sole name into a new joint account in the names of herself and her adult son. When the account was set up, it was agreed that either the mother or son could withdraw money from the account without the signature of the other.

On the mother's death, half of the value of this joint account was detailed as being part of her estate for IHT purposes. However, HMRC issued a notice claiming that the whole of the account value should be liable to IHT. HMRC has successfully argued its case on the basis that the gift was made into a joint account of which the mother and son were joint signatories. From evidence provided, it was clear that either party could withdraw all of the funds for their own benefit. The taxpayer therefore could not prove that each party had a separate half share that the other was not entitled to access. The whole account was therefore subject to IHT on the mother's death on the basis that she supplied the funds in the first place.

Pre-owned assets tax

An article on making effective gifts would not be complete without a quick mention of pre-owned assets tax (POAT). Unlike GWR, a gift which falls within POAT is subject to an annual tax charge rather than the gift falling back into the estate.

The method of calculation is outside of the scope of this article but advisers need to be conscious of when the charge can bite. The rules were intended to catch transactions structured to avoid a GWR charge – for example where cash is gifted and the donee buys an asset which the donor subsequently benefits from. The legislation looks back at any financing or assets pre-owned since 17 March 1986 and specifically targets land and buildings, chattels and intangible property. So if your client lives in a property owned by their children the history of the finance used to purchase the property would certainly need to be discussed.

Conclusion

Lifetime giving, if structured correctly, can be a tax efficient way of reducing an individual's taxable estate and passing wealth down the generations. Careful consideration needs to be given to the amounts and assets gifted to ensure that a donor has sufficient funds for their own needs. Once this has been determined as being viable, the gifts need to be correctly made and documented to avoid any unexpected liabilities on death. Advisers also need to take into account other taxes, such as capital gains tax, which can arise if gifting an asset other than cash. **TPT**

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newsfile

Finance Bill 2013

The government has tabled amendments to the Finance Bill in the following areas:

- Sch 10: transfer of assets abroad – to correct the definition of 'person abroad' for companies.
- Sch 14: above the line R&D tax credit – changes are made to the mechanics of the relief to ensure consistent net benefit for the company irrespective of the rate of corporate tax paid.
- Schs 16 & 17: tax relief for video games development – the commencement date is delayed as state aid approval for this relief has not been granted as yet; and
- Sch 2: tax advantage share schemes – allow companies more flexibility in the reinvestment of cash dividends paid under a SIP.

Clauses 6 to 15 were passed without amendment on 16 May. Clauses 17 to 28 and schedules 4 to 9, 11 and 12 were passed without amendment on 21 May.

New CIOT president

Stephen Colecough has been voted in as president of the CIOT. Taking Europe as his theme for the year he called for: "a more serious, grown-up approach from government to complying with EU tax law".

Stephen Coleclough LLB CTA(Fellow) FIIT TEP FRSA FInstCPD is qualified as a solicitor and a partner in indirect taxes at PwC. From 2008 to 2012 he was president of the Confédération Fiscale Européenne, the body of european tax advisers covering 33 national organisations from 24 states.

The new CIOT deputy president is Anne Fairpo, a barrister at 13 Old Square Chambers and Atlas Chambers. The new CIOT vice-president is Chris Jones, director of tax markets and learning solutions for LexisNexis UK & Ireland.

Statutory residence test

The statutory residence test (SRT) came into effect on 6 April 2013, and HMRC released guidance notes on the SRT and the associated overseas workday relief (OWR) in early May 2013. Unfortunately this guidance includes the ordinary residence condition which is to be abolished by Finance Bill 2013, also with effect from 6 April 2013.

A new version of HMRC 6: *Residence domicile and the remittance basis* is expected to be released soon. HMRC has also promised an online tool, in the manner of the employment status tool, to help taxpayers decide for themselves if they are treated as resident in the UK or not.

Exchange of tax data

HMRC is working with the Inland Revenue Service in the US and the Australian Tax Office in Australia to analyse 400 gigabits of data containing the names of taxpayers and tax advisers who have used, or advised on, the use of companies and trusts in offshore tax havens. The territories covered include Singapore, the British Virgin Islands, the Cayman Islands and the Cook Islands. The names of over 100 individual taxpayers and over 200 tax advisers have already been identified from this data.

OTS responds to PAC

Following the report of the House of Commons Public Accounts Committee (PAC) into tax avoidance and the role of large accountancy firms (see TPT 34-10 May 02), Michael Jack, the chairman of the Office of Tax Simplification (OTS), has written to the chair of the PAC. His letter outlines the wide range of reports the OTS has published since its formation in 2010, and stresses the OTS is independent of HM Treasury.

Consultations

Unapproved share schemes

The OTS submitted its review of unapproved share schemes in January 2013, and the government is consulting on five of the OTS suggestions:

- share for share exchanges and rollovers;
- corporation tax relief following a takeover;
- internationally mobile employees;
- ITEPA 2003, s 222 and 'making good' of amounts paid by employer; and
- valuation rules for listed shares.

Responses are requested by 16 August 2013.

Partnerships

The following aspects of partnership tax law have been used in tax avoidance schemes and are now the subject of consultation:

- to prevent disguised employment relationships by removing the presumption of self-employment for salaried members of LLPs; and
- to limit schemes through which partnerships that include corporate members allocate profits or losses, where it is 'reasonable to assume' that the main purpose is to obtain a tax advantage.

Views on the design and effectiveness of the proposals are requested by 9 August 2013, so that new legislation can be included in Finance Bill 2014 to be effective from 6 April 2014.

Visual effects industry

The government has proposed two options for changes to the film tax relief scheme, and has asked for comments and further suggestions by 2 July 2013.

CTF to Junior ISA

This consultation examines whether it should be possible to transfer funds from a child trust fund account (CTF) to a junior ISA. The government acknowledges that children who hold a CTF should not be barred from holding a junior ISA if the ISA would suit their long term needs. Comments are requested by 30 August 2013.

Entertainers and NIC

HMRC has put forward four options for reforming national insurance contributions paid by self-employed entertainers:

- charge separate rates of class 1 NICs on initial performance payments (IPP) and additional use payments (AUP);
- charge class 1 on IPP and class 4 on AUP;

- charge higher class 2 NIC for entertainers to be paid in addition to class 4;
- entertainers to pay class 2 and class 4 NIC like other self-employed individuals.

HMRC prefers the last option. Responses are requested by 6 August 2013.

HMRC publications

Gift Aid

In new guidance HMRC has clarified that gift aid can only be claimed in respect of gifts of money by individuals. It does not apply to goods donated to charity shops. However, in certain situations a charity can offer to act as an agent for private individuals and sell goods on their behalf. If the proceeds are then gifted to the charity by the doner who makes a gift aid declaration, gift aid may be claimed on the net proceeds.

ATED

Taxpayers who hold properties that are likely to be subject to the annual tax on enveloped dwellings (ATED) can ask HMRC for a pre-return banding check. HMRC now say a response to such a request will be issued within 30 working days (not 20 as originally stated).

Deliberate defaulters

A second batch of 15 taxpayers' details has been published on the HMRC website under FA 2009, s 94: publication of deliberate defaulters. The average amount of tax or duty owed by these taxpayers is £309,837. For the first batch of nine taxpayers published on 21 February 2013 the average of tax or duty owed was only £96,291.

Negligible value

The list of shares and securities agreed by HMRC as having negligible value has been updated in April 2013 to include Hampson Industries PLC (25p Ord).

Non-resident landlords

Letting agents who act for non-resident landlords should submit an annual information return (form NRLY) to HMRC for the tax year 2012/13 by 5 July 2013. This form has been changed to make it easier to complete, but it cannot be submitted online.

Pensions newsletter

Issue number 57 includes articles on:

- changes to the annual allowance and lifetime allowance;
- pension liberation;
- trivial commutation; and
- HMRC pension scheme guidance.

Employment related securities

This bulletin includes a report on the proposed self-certification of and registration of employee share schemes which is due to come into effect from April 2014. Online filing of share scheme forms will also be introduced from April 2014.

Toolkits

The following HMRC toolkits have been updated for the 2012/13 tax year:

- capital allowances for plant and machinery;
- income tax losses; and
- private and personal expenditure.

CWG2

The 2013 edition of this booklet: *Employer further guide to PAYE and NICs*, has been corrected for the tax treatment of childcare vouchers.

RTI guidance

No RTI reports

From mid June 2013 HMRC will contact employers who appear not to have made any RTI submissions for 2013/14. The employers will be directed to HMRC help and advice.

Where the employer has also paid no PAYE to HMRC, it may also receive a 'specified charge'. This is an estimated amount of PAYE due, based on the employer's PAYE payment and filing history. The specific charge is not a penalty and as such it cannot be appealed. The way to remove it is to submit the full payment submission (FPS) or employer payment summary (EPS) reports required under RTI, which show the deductions due for the period.

Employers who normally make quarterly payments of PAYE are required to submit monthly FPS and /or EPS reports showing the PAYE due, (even if it is not immediately payable) for each and every month.

Annual schemes

For a PAYE scheme to be registered as an annual scheme it must meet all these criteria:

- all the employees are paid annually and on the same date; and
- the employer is required to pay the PAYE due HMRC annually.

If these conditions are met and the scheme has been registered as annual with HMRC, the employer is only required to submit one FPS per tax year for the month in which the employees are paid. If more than one FPS is submitted by the employer for one tax year, HMRC will automatically cancel the annual status of the PAYE scheme.

NI numbers

An employer who wishes to check whether the NI numbers of his employees are correct can submit a national insurance number verification request (NVR) to HMRC, once the first RTI submission has been made. Alternatively where a FPS has been submitted with missing or incorrect NI numbers, HMRC should issue corrected numbers to the employer. However, an error has occurred with this process.

In some cases the NI numbers returned to the employer have no suffix letter (A, B, C or D). HMRC do not know why this has happened, and have put on hold any further confirmation of NI numbers to employers. In the meantime the employer is requested to use the NI number returned by HMRC, but to leave the last digit blank by typing a space using the space bar. It is not clear whether this solution will be accepted by all commercial payroll software.

New PAYE codes

Where the employer has submitted an FPS or employer alignment submission (EAS), which did not include all

points of law

Alchemist (Devil's Gate) Film Partnership v HMRC TC2573

Deferred costs disallowed

The Alchemist Film Partnership was formed in 2001 to produce a film. In its first accounting period, ending 5 April 2002, it claimed to have made a loss of £1.92 million. Its return claimed significant deductions for 'deferred amounts' payable to members of the cast and production crew. HMRC began an enquiry and formed the opinion that these amounts were not properly deductible in the period ending 5 April 2002. HMRC issued an amendment disallowing these amounts and reducing the loss to £597,300. The partnership appealed.

The First-tier Tribunal reviewed the evidence in detail and dismissed the appeal. Sir Stephen Oliver observed that 'expenditure incurred on the production of a film is deductible as soon as there is an unconditional obligation to pay it'. In the present case, the financial statement which the partnership had submitted 'failed to comply with generally accepted accounting practice in the UK'. It 'should have been corrected to remove the provision for deferred payments to cast and crew before being used as a starting point for the calculation of the taxable profit or loss of the partnership'. At the time the financial statement was signed, the 'deferred cast and crew amounts' were unascertainable, and the partnership had not yet incurred the expenditure it had claimed.

S Singh v HMRC TC2586

Privacy for gifts permitted

S Singh worked as a taxi driver and received income from renting properties. During a tax enquiry into his 2005/06 tax return, HMRC issued a notice under FA 2008, Sch 36 para 1, requesting details of the source of various payments into his wife's bank and building society accounts relating the 2005/06. He appealed, contending that some of the payments were gifts or loans from friends and relatives.

The First-tier Tribunal upheld the notice in principle, holding that it was reasonable for HMRC to request the names and full postal addresses of the people whom Singh claimed had made the relevant payments. However the

employees normally on the payroll, without indicating that the EAS was a part submission, HMRC has assumed that any missing employees have left the employment.

Subsequently where the employer submits a FPS including one of those missing employees, that employee is treated as a new starter, with a new employment record. Any details of benefits in the PAYE code belonging to that employee haven't been carried over to his new employment record. Thus his new PAYE code may be wrong.

Employers are advised to use the old PAYE code in such circumstances, but also ring the taxes helpline on 0845 300 0627 to get the employee's PAYE code corrected.

Pseudo PAYE schemes

Many small companies have opened a PAYE scheme in order to obtain a P11D dispensation from reporting the payment of expenses. However, if there is no intention to pay wages or make salary payments, and no employee has been issued with a coding notice, the employer can apply for to be treated as a 'pseudo' employer, before the PAYE scheme is opened. Then no reports are required under RTI, unless and until the employee's pay reaches the lower earnings limit or a PAYE code is issued.

Regulations

Pension schemes

The definition of current standard lifetime allowance for calculating the maximum amount payable as a tax-free lump sum from a registered pension scheme has been reinstated, with retrospective effect back to 6 April 2012, by regulations (SI 2013/1114). The same regulation also reinstates the power for HMRC to de-register pension schemes in certain circumstances with effect from 1 June 2013.

The tax treatment of lump sum pensions and pension compensation paid out by the pension protection fund under pension sharing arrangements on divorce, are aligned with payments made in similar circumstances by registered pension schemes (SI 2013/1117).

Draft regulations have been published which make changes to the information that pension scheme administrators and individuals are required to report in connection with transfers to qualifying overseas recognised pension schemes and 'fixed protection 2014'.

Professional fees

With effect from 10 May 2013, regulations (SI 2013/ 1126) add the following professional fees to the list of tax deductible expenses for employees under ITEPA 2003, s 343(3)(4):

- the trainee registration fee payable by doctors known as 'specialty registrars' to the body responsible for recommending them to the General Medical Council for the award of a certificate of completion of training; and
- the fee payable by costs lawyers to the Costs Lawyer Standards Board to acquire a practising certificate.

International tax

Global tax evasion

The Chancellor of the Exchequer, George Osborn has written to Michael Noonan (The Irish Minister of Finance) in preparation for the G7 meeting in Dublin raising concerns about global tax evasion and avoidance. The letter requests the following actions:

- amend the savings tax directive and associated negotiating mandate;
- embed multilateral automatic exchange of information as a new global standard, based on the agreements with the US;
- improve the availability of information on beneficial ownership;
- signal that artificially shifting profits to very low tax jurisdictions is not appropriate behaviour; and
- encourage updating of the international tax framework where it is not working.

points of law

Tribunal also held that Singh should not be required to explain 'the nature of his stated friendship or his exact familial relationship' with the people in question.

M Healey v HMRC TC2591

Income rather than capital profits

Mr Healey purchased certain floating rate notes marketed by Kleinwort Benson Private bank and described as 'flexi-notes', which had been stripped of interest for a certain period. At the end of the period, Healey sold the notes, making a total profit of £8.68 million.

HMRC issued amendments to Healey's self-assessment for 2003/04, treating the profits which he had made on the sale of the notes, as discounts which were chargeable to income tax under what is now ITTOIA 2005, s 381. Healey appealed, contending that the flexi-notes were qualifying corporate bonds (QCBs) under TCGA 1992 s 17, and that his profits were capital gains rather than income.

The First-tier Tribunal rejected this contention and dismissed Healey's appeal, applying the principles laid down by the House of Lords in *National Provident Institution v Brown* [1921] 2 AC 222 and 8 TC 57. The tribunal judge observed that the marketing brochure for the floating notes 'stresses that the product was designed to give an enhanced after-tax return significantly in excess of interest on fixed-term deposits. Moreover, the brochure offers the flexi-note package as a suitable investment for individuals and their trustees. The trustees would, if there were competing claims between income and capital beneficiaries, be bound to treat the profit on the discount, or a large part of it, as income.'

D Morgan v HMRC TC2596

House was PPR

David Morgan was engaged to be married in 2001, and agreed to purchase a house. Shortly before the completion of the purchase, his fiancée ended the engagement. Morgan moved into the house on 15 June 2001 and moved out on 30 August 2001. He rented the house to tenants from then until March 2006. He then moved back into the house, but sold it four months later.

HMRC issued an assessment charging tax on the gain. Morgan appealed, contending that the gain qualified for principal private residence (PPR) relief. The First-tier Tribunal accepted this contention and allowed his appeal. Judge Gort held that, when Morgan moved into the house, 'it was his intention to make it his permanent residence'.

C Atkinson v HMRC TC2606

Trade not on commercial basis

Atkinson sold a previous business and re-mortaged his home in 2003 to raise the money to buy a boat: 'Josefine'. In May 2006 Atkinson qualified as a skipper of commercial vessels and in August 2006 the Josefine gained its MCA code 2 vessel certificate. Atkinson drew up a business plan before commencing a self-employed yacht charter business using Josefine. He also set up a company (B Original Ltd) which chartered Josefine to corporate customers.

Atkinson submitted returns for 2007/08 to 2009/10, claiming that he had made losses on the yacht chartering business which should be set against his other income. HMRC rejected the claims on the basis that it appeared that the trade had not been conducted on a commercial basis. Atkinson appealed.

The allocation of costs between the self-employed enterprise and the company was questioned by the Tribunal. The company ceased trading in April 2009 and Atkinson relocated the yacht chartering business to Plymouth. The tribunal concluded that the self-employed trade was conducted on a commercial basis in 2009/10 but not in 2007/08 or 2008/09.

P & J McCann (Toomebridge) Ltd v HMRC TC2619

No 1982 value

The McCann family traded as sand merchants since 1935, extracting sand from the bed of Lough Neagh. The business incorporated at some point, and at that stage it took over a licence, originally granted in 1965, to extract such sand. A new licence was granted in 1993 and was replaced by another licence in September 1998. In November 1998 the company sold its business to RMC Quarries Ltd and claimed the main asset of the business was a licence in existence in 1982.

The First-tier Tribunal rejected this contention, holding that 'the asset disposed of by the appellant in 1998 was the right to extract sand pursuant to the September 1998 licence'.

Feedback request

Are you satisfied with the contents of this newsletter? Are there topics or issues which are being ignored, or which are covered too frequently? Please let me know your views by emailing me at the address shown below.

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