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CORPORATE TRANSPARENCY AND COMPANIES HOUSE REFORMS

On 28 February 2022, the UK Government published a White Paper on Corporate transparency and register reform, setting out its plans to reform Companies House and increase the transparency of UK corporate entities in support of its reforms to clamp down on fraud and prevent UK companies and partnerships from being misused for international money-laundering purposes.

These reforms sit alongside measures proposed by the government in the Economic Crime (Transparency and Enforcement) Bill 2022 and will be introduced through a second economic crime bill.

The White Paper proposals cover:

- Reform of the Registrar of Companies (the Registrar) existing role and powers
- Identity verification and other anti-money laundering (AML) measures
- Enhanced data sharing
- Improved financial information on the register
- Enhanced privacy mechanisms
- New restrictions over corporate directors.

Reform of the Registrar's existing role and powers

The Registrar will be equipped with new powers to query suspicious appointments or filings and, in some cases, request further evidence or reject the filing. The key principles underlying the querying power are:

- all information supplied to the Registrar or information already on the register will be in scope of the new power;
- the power will be used on a discretionary basis (to help ensure proportionality) and
- the registrar will exercise the power using a risk-based approach.

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Pre-registration, the new power will mean that Companies House will no longer be obliged to accept documents that are delivered where there is reason to query the information provided. Post-registration, when a query is raised, the recipient entity will have 14 days to respond and provide evidence to support the response. In order to mitigate the risk that an entity is unable to deliver the evidence required within that period, the Registrar will have discretion to extend the time limit where deemed appropriate.

The Registrar will also have a discretionary power to remove material which impacts upon the integrity of the register. Clarity on its use to ensure filers understand the parameters of the power and the categories of information which can be removed under is to be provided. As some material submitted to Companies House has legal consequence once filed, the removal of such material is likely, in most cases, to remain a matter for the courts

Identity verification and other anti-money laundering (AML) measures

Mandatory identity verification will be introduced for most individuals incorporating or filing with Companies House. It will be much harder to appoint fictitious directors or beneficial owners. If an individual fails to verify, the public register will be annotated to show this.

In future, agents will be required to evidence that they are adequately supervised before they can register with Companies House and file on behalf of their clients. This evidence will be cross-checked against information from HMRC and the Financial Conduct Authority to ensure its validity. In effect, overseas agents will no longer be able to access Companies House unless at some future date the government determines that any other jurisdiction should be deemed to have an equivalent supervisory regime.

All new and existing company directors, (and equivalents for other registrable entities), PSCs and anyone else submitting filings will need a verified account at Companies House. These can be set up directly or through a third-party agent. A verified account will be mandatory to file or incorporate with Companies House. Along with company directors, and their equivalents in other entities, PSCs will be required to verify their identity. Alongside identity verification for those managing registrable entities, this will provide a substantial improvement in the reliability of the ownership information on the register. It will also be more difficult to carry out such frauds via agents, as only anti money laundering-supervised third-party agents will be able to register directors (or other officers) at Companies House. Individuals who fail to verify their identity or comply with new requirements under these reforms will be subject to new criminal and civil sanctions

When Trust or Company Service Providers (TCSPs) apply to form a company (or other registerable entity) or to file on a company (or other registerable entity's behalf) a third-party agent will need to provide evidence of its credentials. The third-party agent will also be required to list the identity verification checks that they have carried out on each prospective director (or equivalent) or details of the director's (or equivalent's) account(s) that already exist for those persons. They will also be required to declare that they are satisfied that all relevant identity checks have been carried out.

Under the new rules, all third-party agents will require to be registered and supervised in the UK. However, to make this legislation flexible, the government will have the power to allow third party agent registrations and filings from an overseas jurisdiction that is equivalent to the UK's, and to amend that list as necessary.

Enhanced data sharing

Companies House will have more extensive legal gateways for data sharing with law enforcement, other government bodies and the private sector. These include the power for the Registrar to proactively pass on relevant information to law enforcement and other public and regulatory bodies, including the electoral commission, as well as anti-money laundering supervisors, when certain conditions are met.

Improved financial information on the register

A new requirement to file a single set of accounts and simplifying accounts filing options should lead to more consistent financial information across different datasets e.g., Companies House and HMRC. Companies will be required to file enough information to accurately identify which accounting category they belong to, making it far more difficult to abuse the accounting framework and file accounts under the wrong regime to hide income levels. Mandatory digital filing and i-XRBL tagging will allow anyone to search information on the register much more quickly and easily. Suspicious filings could then be reported to Companies House, who could then engage the new querying power to challenge the filing and, if fraudulent, use enhanced removal powers to remove the information from the register.

The filing options available to small and micro companies will be simplified by reducing the filing options to just two: micro-entities and small companies. Removing the abridged and "filleted accounts options will make the options easier to understand, reduce fraud and error and increase transparency. All small companies (including micro-entities) will be required to file a profit and loss account. Small companies will also file a director's report unless they meet the micro-entity thresholds, when they will still have the option to not prepare or file a director's report. Dormant and small companies will in future be required to file sufficient information for eligibility to be checked. This will include the need to file an eligibility statement which will provide the Registrar with additional evidence to take stronger enforcement action for false filings in future.

Enhanced privacy mechanisms

Anyone whose personal information has been made public on the register in the past will be able to apply to have some of that information suppressed. Additionally, individuals who can provide evidence that having their personal information on the public register puts them at risk of harm can apply to Companies House to have it suppressed.

New restrictions over corporate directors

It will be a requirement to have at least one fully verified person directly associated with each entity on the companies register, and implementation of new restrictions over corporate directors will make it more difficult to create anonymous corporate structures. In future, companies will be allowed a maximum of one 'layer' of corporate directors, which must be based in the UK, and the natural persons directing that corporate director will be subject to identity verification.

At present, companies can act as directors provided there is one natural person listed on the board. This has led to confusion and uncertainty as to who actually controls a company. However, it is believed that the practice retains value by offering a degree of flexibility should their use be desirable. The reform of corporate director rules will therefore adopt a 'principle based' exception which is based on two conditions that must be satisfied:

- that all directors of the company seeking such appointment are themselves natural persons; and
- those natural person directors are, prior to the corporate director appointment, subject to an appropriate identity verification process.

A number of other measures are also in preparation that further tighten the rules for corporate directorship. For example, it will be made clear in law that corporate directors may only be appointed if they have legal personality (that is they are able to function in business like a natural person). It has also been established that such compliance should extend consistently to all appointable entities including limited liability partnerships. Registrations of corporate persons that are not accompanied by a verified person in a management position will be rejected.

The government is not minded to extrapolate the same principle-based restrictions set out above for corporate directors for corporate members of LLPs or corporate general partners of LPs. For these entities, the corporate person will have to provide the details of their director(s) or a managing officer, whose identity must be verified. The government will consider whether any further restrictions on the use of corporate members of LLPs and corporate general partners of LPs will help mitigate the risk of misuse without affecting the legitimate use of these structures, particularly in the investment sector.

All Scottish General Partnerships are to be banned from being appointed as a corporate director, corporate member of an LLP, or corporate partner of an LP.

A useful table of the full set of reforms can be found on pages 65 to 81 of the White Paper.

TAX-FREE CHILDCARE PROVES MORE TAXING THAN FIRST THOUGHT

Background

A recent decision on a case concerning payroll and welfare benefits provides interesting insight into some of the anomalies which can appear when employers need to dovetail welfare benefits with payroll. Both tax-free childcare and the scheme available from the Department of Education to offer 30 hours of free childcare are administered by HMRC under a joint online application process. Even though the legislation underpinning the two schemes is different, the

decision-making process for deciding eligibility is the same.

In HMRC v JS and Others [2021] UKUT 264 (AAC), three cases were being decided which all centred around the same principle – a dispute in relation to the qualifying eligibility criteria for 30 hours of tax-free childcare per week. All three appeals by HMRC were dismissed because under sections 11 and 12(1), (2)(a) of the [Tribunals, Courts and Enforcement Act 2007](), a judge can, but is not compelled to set aside First-Tier Tribunal decisions on an error on a point of law. The judge declared that: "In this case the issues have become academic, and to set the decision aside would be futile."

The claims had been rejected by HMRC in all three cases but were upheld at the First-tier Tribunal.

What was the court asked to resolve?

The court was asked to resolve two issues:

In the first two cases, the assessment of income under regulations 5 and 6 of The Childcare (Early Years Provision Free of Charge) (Extended Entitlement) Regulations 2016 (the calculation issue); and, in the third case, whether the tribunal decision must be "prospective only" under regulation 15 (the 'prospective decision' issue which is taken into account when considering the timescale which is used when the claimant makes their declaration on submitting the claim).

To qualify for tax-free childcare, an individual must work at least 16 hours a week and earn at least the National Minimum or Living Wage. If the individual has a partner, they should have the same expectation.

Doing the maths – assessing the income

The way in which the eligibility was calculated was instrumental in deciding the outcomes. HMRC had taken a strict monthly received cash value as the reason for deeming claimants to be ineligible for the benefit, whereas if the value of pay earned was spread across the period in which the claimant had worked, the result was different. The Tribunal took the view that the purpose of the legislation was not to trip people up, but to give people assistance and the claimants were being denied something which it was technically their right to claim.
The First Tier Tribunal had not undertaken the same calculations as the Upper Tribunal for the claimants and looked at the spread of the payments over a year rather than the actual periods worked. However, by aggregating the payments from both sources of income for each individual over the year, it was still able to conclude that an entitlement existed as the payments exceeded the threshold on a quarterly basis.

HMRC had argued that the expected income under regulation 6(1) should be calculated by reference to the amount the person expects to receive during the 13-week period, not the amount that the person has actually earned during that period. The claimants argued that the periodic earned income approach gives a more equitable result because it offers entitlement to free childcare during the periods each year when the person needs the childcare the most – i.e. when they are working – which was surely the purpose of the regulations.

In his commentary the judge stated that: "The approach advocated by HMRC would defeat the purpose of the scheme itself, which is to provide childcare for those who work at least a minimum number of hours at the minimum wage."

The judge also felt compelled to point out that the First Tier Tribunal judge had erred in her classification of one of the claimants as self-employed when in fact she should have been classified as an employee – which meant that the criteria for assessment of eligibility were slightly different.

He went on to clarify: "Even if DL had been self-employed in that work, however, the judge's approach was wrong because the regulations limit the way in which self-employed income is calculated where it is to be amalgamated with the expected income from employed earnings. A wholly self-employed person's expected income can be calculated under regulation 5 (1) (b) (i) with its reference to the relevant threshold within the declaration period as for an employed person; alternatively, it may be calculated under 5 (1) (b) (ii): (ii) "The person's expected income from the work in the period specified in paragraph (5) is greater than or equal to four times the relevant threshold."

The judge referred to the case of Johnson and Secretary of State for Work and Pensions v Johnson [2020] EWCA Civ 788 which he considered bolstered his own arguments for the way in which eligibility should be calculated because it, "considered the rationality of regulations under the Universal Credit scheme in the context of difficulties arising out of double payments from employers in some months due to the movement of pay days due to public holidays." This caused difficulties in the calculation of otherwise regular benefit payments of universal credit to affected employees. The point was made that, "it is…no part of the policy underlying universal credit to encourage

claimants to base their employment choices on the salary payment date offered by a prospective employer. Yet that is what is happening for these Respondents."

Prospective decision – were the claims time-barred?

When considering the period for which the claimant's declaration has effect, Regulation 15 of the Childcare (etc.) Regulations 2016 provides that where a tribunal decides a case under regulation 24, the date of that tribunal decision counts as being the first day of the first period in which the declaration has effect – in other words, it is treated as if the claim has just been made on the date of the decision. The judge concluded that in accordance with Evans LJ in Chief Adjudication Officer v Woods reported as R(DLA) 5/98, "exceptionally, decisions may be made that are prospective in effect" and that the claims could therefore stand and the claimants' entitlement to the funds would remain valid as if the expiration date had not yet passed or become time-barred.

Summary

There is an intricate mix of welfare and employment taxes legislation in this case which highlights the need for different government departments to align their policy and legislation to avoid anomalies arising.

COMPANY PURCHASES OF OWN SHARES WITH MULTIPLE COMPLETION

Anyone who has been involved with a purchase by a company of its own shares will know that, in order to obtain the capital gains treatment rather than the distribution treatment for tax purposes, it is necessary for a number of conditions to be met.

One of the conditions is contained in section 1042 (1) CTA 2010 which says that the seller must not, immediately after the purchase, be connected with the company making the purchase.

Section 1062 (2) says that a person is connected with a company if the person possesses more than 30% of

a. The issued ordinary share capital of the company,

b. The loan capital and the issued share capital of the company, or

c. The voting power in the company.

It often occurs in practice that, while all the other conditions for the capital gains treatment are met, the purchasing company has insufficient cash to pay the outgoing shareholder in one lump sum and seeks to make the payment in instalments. The outstanding instalments will represent the loan capital and in most cases the test will be failed.

Apart from delaying the purchase and trying to save up, one alternative is to set up a new company, owned by the ongoing shareholders. It will purchase the existing company by issuing its own shares to the ongoing shareholders and pay cash and issue some form of loan instrument to the outgoing shareholder. One of the downsides to this however is that there are now two companies rather than one.

Another alternative is to affect a purchase of own shares but with multiple completion.

The Chartered Institute of Taxation published guidance received from HMRC on 21 February 2022, clarifying HMRC's position on the legislation and, in particular, whether the seller remains connected with the company immediately after the purchase.

Section 1062 uses the word "possess" in relation to 30% of, inter alia the issued ordinary share capital of the company.

HMRC's view is that "possess" refers to legal as opposed to beneficial ownership. Where shares are subject to a sale under a multiple completion contract, the seller may (depending on the terms of the contract) lose beneficial ownership of all of the shares on the date of the contract. However, the legal ownership of the shares is retained until the sale of those particular shares has completed. This is the case even if those remaining shares are converted to so – called deferred shares with no voting or economic rights of the company on completion of the first tranche.

Importantly, HMRC go on to say that "as long as the seller remains a legal owner of so many "non completed" shares that exceeds the 30% limit, they will remain connected with the company by virtue of section 1062 (2) (a) – possession of ordinary share capital. In such circumstances, the seller would not qualify for capital treatment under section 1033 CTA 2010".

HMRC acknowledge that it "may have issued clearances under section 1044 CTA 2010 where the connection tests might not have been met due to retained legal ownership of the shares. For the

avoidance of doubt, HMRC will not treat such clearances as void purely on the basis of retained legal ownership of the shares. However, going forward HMRC will apply the connection test as described above which may result in some applications being rejected."

HMRC therefore expect that many alterations to the company share capital structure (including the variation of rights attaching to any class of shares), or change in share ownership, which is relevant to determining whether the conditions required for section 1033 to apply are met, will be validly implemented in accordance with the relevant company law. This should take place at the time of the first share purchase, be registered at Companies House where necessary, and written up in the company's statutory books as soon as reasonably practicable."

HMRC's manuals are to be updated to reflect their position.

Historically, many multiple completions have been undertaken to ensure that the 30% of loan capital and issued share capital condition is met.

It is now important that, after the first completion in particular, the outgoing shareholder does not have legal ownership of more than 30% of the company's issued ordinary share capital.

THEY'LL BE DANCING IN THE STREETS OF WEST BROM

When the first-tier tribunal allowed the tax payer's appeal in Basic Broadcasting Ltd (2022) TC08400, involving, as it did, the television presenter and supporter of West Bromwich Albion Football Club, Adrian Chiles must have been delighted.

The case was another in a lengthening line of cases involving television presenters who operate through their own limited companies.

Adrian Chiles had been employed by the BBC as a journalist from 1992 until 1996 when the BBC required him to cease his employment and to provide his services though a personal service company. He set up Basic Broadcasting Ltd and entered into contracts with the BBC and subsequently also ITV. In addition to his regular programmes, he made guest appearances on television, television adverts, wrote newspaper articles and appeared at corporate events. He also attended a number of unpaid charity events and turned down offers of work.

HMRC assessed the company to PAYE and NIC in respect of the five years to 5 April 2017 which amounted to slightly over £1.7 million. HMRC's view was that the BBC and ITV contracts were subject to the IR35 legislation as, had he carried out the work as an individual, the contracts would have been contracts of service and therefore employment income.

In 2007, Adrian Chiles engaged Avalon Entertainment Ltd to act as his agent and they negotiated the company's contracts with ITV. Prior to that, Knight Ayton Management acted as his agent and they secured a number of engagements outside the BBC, including corporate work, voiceovers, and print journalism. Knight Ayton also negotiated a contract for Basic Broadcasting Ltd with the BBC.

Also in 2007, Basic Broadcasting Ltd engaged Hilary Jaunsey to work as Mr Chiles' personal assistant, managing his diary and liaising with his agent, broadcasters, and other clients.

In paragraph 203 of their judgement, the tribunal noted that there is no statutory definition of employee or employment, noting that "the classic statement on the test to identify a contract of service is that of MacKenna J in Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance (1968) 2 QB 497 at 515:

i. The servant agrees that in consideration of a wage or other remuneration he will provide his own work and skill in the performance of some services for his master.
ii. He agrees, expressly or impliedly, that in the performance of that service he will be subject to the others control in a sufficient degree to make that other master.
iii. The other provisions of the contract are consistent with it being a contract of service".

The tribunal then went on to state that "the first stage in the test is generally known as "mutuality of obligation". The second condition is that of control to a sufficient degree. The third condition operates as a negative condition. If the first two conditions are satisfied, the contract will be a contract of employment unless there are other provisions of the contract or other factors which are inconsistent with that conclusion and of sufficient importance that the

tribunal can conclude that the contract is not one of service …".

At paragraph 282, the tribunal stated that it was common ground that there was mutuality of obligation in relation to the BBC contracts but went on to consider the ITV contract, as Basic Broadcasting Ltd did not accept that there was mutuality of obligation. The tribunal considered that mutuality of obligation existed in respect of both the ITV and BBC contracts.

In relation to control, the tribunal considered whether ITV and/or BBC had a sufficient framework within which they could control what was to be done by Mr Chiles, where it was to be done, when it was to be done and how it was to be done. They considered the ITV contracts from paragraph 305 of their judgement and the BBC contracts from paragraph 311. Overall, they were satisfied that there was a sufficient framework of control to constitute Mr Chiles, prima facie, was an employee of ITV pursuant to the hypothetical ITV contracts and an employee of BBC pursuant to the hypothetical BBC contracts.

The judgement at paragraph 318 states that "at this stage we take into account that there is mutuality of obligation in relation to all the hypothetical contracts and a sufficient framework of control to establish a prima facie case that Mr Chiles would be performing his services as an employee". They went on to say "we have found that the broadcasters do have a sufficient measure of control to establish a prima facie case that there is a contract of employment. However we do not consider that the extent of the broadcasters' control in either case is a compelling factor. Essentially, we must consider whether there are other provisions of the contracts or other factors which displace the prima facie case and require a conclusion that the contracts are contracts for services rather than contracts of employment. In our view the most significant factor that might displace the prima facie case that Mr Chiles was an employee under the hypothetical contract is whether he was in business on his own account. But only if the hypothetical contract can properly be seen as part of that business. This is the approach taken by the Upper Tribunal in Atholl House and in other cases. It involves a value judgement and will depend upon a range of factors which will carry different weight in the overall analysis".

Immediately prior to their conclusion to allow the appeal by Basic Broadcasting Ltd, the tribunal stated that "We must stand back and look at the circumstances as a whole. The circumstances include the prima facie existence of a contract of employment given the existence of mutuality of obligation and a sufficient framework of control. We take into account the nature and extent of the framework of control we have found to exist. We also take into account the nature and extent of the business which we have found Mr Chiles to be treated as conducting on his own account. In all the circumstances, we consider that Mr Chiles is to be treated as entering into the hypothetical contracts as part and parcel of that business. They were contracts for services and not contracts of employment. We conclude therefore that the condition in section 49(1)(c) ITEPA 2003 is not satisfied in relation to the ITV contracts or the BBC contracts in any of the relevant tax years. In reaching that conclusion we have not given any weight to the expressed intention of the parties in the BBC contracts that they would not constitute Mr Chiles as an employee of the BBC."

The off payroll working legislation had not been introduced at the time covered by the appeals and, had it existed, it is probably very unlikely that the BBC would have advised Mr Chiles to form his own company in 1996 and engage with it, and indeed whether the decision would have been the same had this legislation been enacted at the time.

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'KUNJURING' UP THE RIGHT RESULT?

An interesting case came out of the Tax Chamber last October which concerns itself with the nature of expenses claims incurred whilst in employment and whether they are ultimately tax-deductible or not.

The decision, issued from the First Tier Tribunal (FTT) in October 2021, reminds us that the qualifying criteria for employment-related expenses are that the expense must be wholly, exclusively and necessarily" incurred in the proper performance of the employee's duties, in accordance with section 336 ITEPA 2003. In this case, the employee was able to obtain tax relief for part of the accommodation costs he had incurred in south London, which is an extremely unusual outcome and based on a specific fact pattern.

Background

To fulfil his ambition to become a maxillofacial surgeon, Mr Kunjur needed to undertake a four-year full-time training contract. Having located a suitable contract in south London, Mr Kunjur, who was a dental

surgeon residing in Southampton with his family, accepted the post, which was the only one available at that time. The contract also required Mr Kunjur to carry out occasional duties at another nearby south London hospital, as well as regular night duties, and to be within 30 minutes of the hospital if on call.

Mr Kunjur was faced with a daily commute to south London from Southampton, and it soon became clear that the travelling time extended his day in such a way as to make it untenable, when added to the pressure of the work, the training, and the night duty element of the role. Mr Kunjur was concerned that he might not be able to discharge his duties properly, which may lead to undesirable outcomes, such as a negligence claim from a patient.

Even though the possibility of employer-funded hospital accommodation and self-funded ad-hoc hotel accommodation might have been options, Mr Kunjur decided that the best option for him personally as a mature student was to take a modestly priced apartment nearby, where he could leave his belongings and study materials, and be alone to study in peace from Monday to Friday. He returned home at the weekends.

Mr Kunjur made a claim for a deduction on his tax return relating to the living accommodation expenses (note that his travelling expenses would not have qualified due to the permanent workplace rules), and this was denied by HMRC, who also imposed a penalty for negligent completion of a tax return.

Square peg, round hole

Despite HMRC's plea that none of the tests (that the employee incurred the expenses "wholly, exclusively and necessarily" incurred in the proper performance of his duties and that he was obliged to incur and pay them), the FTT concluded that Mr Kunjur was on call during his training contract and thus was required to live at or near the hospital.

The strict term "wholly, exclusively and necessarily" was discussed many years ago, in [Lomax (HMIT) v Newton (1953) 34 TC 558], when Vaisey J commented:

'An expenditure may be 'necessary' for the holder of an office without being necessary to him in the performance of the duties of that office; it may be necessary in the performance of those duties without being exclusively referable to those duties; it may perhaps be both necessarily and exclusively, but still not wholly so referable. The words are indeed stringent and exacting; compliance with each and every one of them is obligatory if the benefit of the Rule is to be claimed successfully.'

The decisions made by the FTT are unusual in the context of the "wholly, exclusively and necessarily" requirements. The wholly and exclusively tests would appear not to have been met by virtue of Mr Kunjur having decided independently of the hospital that he would rent an apartment in Collier's Wood, which was not an objective requirement of his work, but a personal choice which put him in a position to carry out his duties. There was a requirement by his employer to be on call and to be within 30 minutes of the hospital during those times, but Mr Kunjur had initially tried to carry out the role by remaining in his home in Southampton, and renting that particular flat in that particular location was not the thing which enabled him to actually carry out those duties day to day.

The FTT nevertheless considered that although Mr Kunjur's use of the flat had some mixed-use purpose to it (which fails the wholly and exclusively tests), the primary purpose was work and study related – which together were deemed to be 'in performance of' his employment duties. His being on call whilst living in the flat influenced their decision heavily, as did the fact that members of his family did not visit the premises whenever he was staying there or at weekends for the duration of the lease.

However, the fact remains that the premises could have been used for a private purpose to a much greater extent if Mr Kunjur had been so inclined, because the property was let exclusively to Mr Kunjur and was thus available to him to use privately, whether he did or not.

The Tribunal also unusually chose to examine the scenario for a self-employed person – possibly influenced by the fact that Mr Kunjur had paid away the costs of the living accommodation himself and was claiming tax relief on them. The legislation at [Income Tax (Trading & Other Income) Act 2005] allows for an apportionment to be made between private and business expenses. It appears that the FTT went on to direct HMRC and Mr Kunjur to decide between themselves on how the private use apportionment of the costs should be sensibly worked out on the basis of this legislation, which is nothing to do with employment tax legislation (under which Mr Kunjur's student contract could be said to be governed).

Penalties: dismissed

The Tribunal also considered that the penalties should be wholly dismissed because the taxpayer had relied upon his accountants to get his tax return right – which

is probably the right outcome, and several other case decisions have reached the same conclusion, because Mr Kunjur's claim was made on the basis of advice received from his accountants and completed by them.

Was the right decision reached here?

In an employment tax related case it is not usually the Tax Tribunal's practice to consider non-employment tax related tax legislation, as happened with the expenses here. It may well have seemed equitable to allow for part of the expenses because Mr Kunjur carried out some of the work he was contracted to do at the flat, but the fact remains that the expenses were not "wholly, exclusively and necessarily" incurred under the strict employment tax tests set down in law under Section 62 of ITEPA 2003.

Conclusion

This is a surprising outcome which it may not be advisable to place heavy reliance upon – and in any case, the fact it is an FTT decision means it has not set any precedents. It may be likely that HMRC will allow it to go unchallenged due to the small amount the taxpayer is due to receive back, without bothering to appeal: but on the other hand, they may consider that if a substantial amount of similar claims are likely to be made by other taxpayers on their tax returns as a result of this decision, they may consider it necessary to attempt to have that decision overturned, as a deterrent.

CHANCELLOR'S SPRING STATEMENT 2022

Written by Croner-i, ICAS Evolve Partner

So much for the view that the Chancellor's Spring Statement would be a gentle run through the latest forecasts from the Office for Budgetary Responsibility (OBR).

In what was more a mini-Budget than a Spring Statement, the Chancellor set out some significant changes which add up, it is claimed, to 'the biggest net cut in personal taxation in over a quarter of a century'.

Other taxes were also affected. The Chancellor has summarised his overall approach in a glossy Tax Plan which he brandished at the end of his speech. This looks at three areas which are covered below:

1. Cost of living
2. Capital, People, Ideas; and Sharing growth
3. Cost of living

The OBR forecast in its Overview of the March 2022 Economic and Fiscal Outlook that COVID and the war in Ukraine will lead to an average UK inflation rate in 2022 of 7.4% (peaking at the end of the year at 9%). Real living standards are 'set to fall by 2.2 per cent in 2022-23 –their largest financial year fall on record – and not recover their pre-pandemic level until 2024-25.'

The Chancellor was given many suggestions for helping us through these challenging times. One he has gone for is a cut in fuel duty –only the second in 20 years. So, from 6pm on 23 March 2022, the duty on petrol and diesel will be cut by 5p per litre for a period of 12 months. This will amount to a £5bn saving for motorists.

Personal tax

Another widely made suggestion was to dispense with the health and social care levy (or at least its precursor the temporary National Insurance contributions (NIC) rate increase from April 2022). That has not happened.

Instead, from July 2022 the NIC primary threshold and lower profits limit will increase by £2,690 to £12,570 bringing it into line with the income tax personal allowance for 2022-23. This will mean that approximately 70% of workers will pay less NIC overall. There is no relief for shareholders facing higher rates of income tax on dividends though.

Business Tax

The second chapter of the Chancellor's Tax Plan looks in turn at People, Capital, and Ideas. Most of it is a bit woolly at this stage.

On People, a concerted effort will be made to improve skill levels and training. The effectiveness of the apprenticeship levy will be reviewed.

On Capital, the lack of investment by businesses will be addressed:

"We're going to cut and reform taxes on business investment. We want to build on the momentum of the super-deduction to drive business investment.

The challenge now is to find the most effective way to cut taxes on investment while ensuring value for the taxpayer. We will engage with businesses and confirm plans at the Budget later this year."

So, in conclusion, there was more here than we expected. It is good to know that the Chancellor has a tax plan but also interesting to note that it does not appear to include a number of areas thought to be likely candidates for reform, including business asset disposal relief and tax relief for pension contributions. That does not mean they are not going to happen –the team here at Croner-i will keep you informed.

To read more information and find out how to get updates from Croner-I's expert team, follow this link.

REVISED GUIDANCE FOR ICAS AUDITORS OF SCOTTISH CHARITIES

ICAS has published revised Auditor's report guidance for ICAS firms acting as auditors of Scottish charities for the audits of financial statements with reporting periods commencing after 1 February 2020 with filing after 31 December 2020.

The Guide is available on icas.com.

It is intended to assist auditors prepare auditor's reports for Scottish charities in accordance with the following standards and guidance issued by the UK Financial Reporting Council (FRC):

- International Standard on Auditing ISA (UK) 570: Going concern (revised September 2019).
- ISA (UK) 700: Forming an opinion and reporting on financial statements (revised November 2019) (updated January 2020).
- Bulletin: Illustrative auditor's reports on United Kingdom private sector financial statements for periods commencing after 1 February 2020 with filing after 31 December 2020 (August 2021).

The Guide is relevant for charitable companies and non-company charities preparing their financial statements in accordance with the Charities SORP (FRS 102) and FRS 102: The Financial Reporting Standard Applicable in the UK and Republic of Ireland.

It is not relevant to auditor's reports on financial statements prepared on a receipts and payments basis.

Illustrative auditor's reports included in the Guide

The previous edition of this Guide included illustrative reports for a small charitable company and a non-company charity. This edition of the Guide has been expanded to include three additional illustrative reports.

The following five illustrative auditor's reports are contained within the Guide, along with accompanying commentary:

- An unmodified auditor's report for a small standalone charitable company registered in Scotland.
- An unmodified auditor's report for a standalone non-company charity registered in Scotland.
- An unmodified auditor's report for a non-company charity registered in Scotland preparing group and parent charity financial statements.
- An auditor's report for a non-company charity registered in Scotland with a material uncertainty related to going concern.
- Unmodified auditor's report for a non-company charity registered in England & Wales and in Scotland.

Auditors are reminded that OSCR considers that they have a statutory duty to report under Section 46 of the Charities and Trustee Investment (Scotland) Act 2005 to the regulator if they issue:

- A non-standard 'modified' auditor's opinion.
- An auditor's report with a material uncertainty related to going concern.
- An auditor's report with an emphasis of matter paragraph.

Further guidance on the statutory duty to report is set out jointly by the UK charity regulators in Matters of material significance reportable to UK charity regulators.

Key changes arising from revised ISAs (UK) and FRC guidance

The revisions to ISA (UK) 570 and ISA (UK) 700 brought significant changes to the wording of auditor's reports for periods commencing on or after 15 December 2019, relating to going concern and irregularities, including fraud. However, the Guide is relevant to financial statements for periods commencing after 1 February 2020 with filing after 31 December 2020 to align with the latest edition of the FRC's Illustrative auditor's reports bulletin.

ISA (UK) 570 has been revised to require the auditor to make a positive statement in their auditor's report about the trustees' use of the going concern basis of accounting to prepare the financial statements.

ISA (UK) 700 has been revised to require the auditor to explain the extent to which the audit was considered capable of detecting irregularities, including fraud within their auditor's report. In the FRC's Illustrative auditor's report bulletin, this requirement is met in the section of the auditor's report on the 'Auditor's responsibilities for the audit of the financial statements.' The illustrative examples in this Guide follow the same approach.

Key change to the Guide arising from current practice

Regulation 10(4)(e)(i) of the Charities Accounts (Scotland) Regulations 2006 requires the auditor to give an opinion on whether the financial statements give:

- "a true and fair view of the state of affairs of the charity at the end of the financial year in question and of the incoming resources and application of the resources of the charity in that financial year."

The report examples therefore include the following wording:

In our opinion, the financial statements:

- (In the case of a charitable company) "give a true and fair view of the state of the charitable company's affairs as at [Date] and of its incoming resources and application of resources, including its income and expenditure, for the year then ended."
- (In the case of a non-company charity) "give a true and fair view of the state of the charity's affairs as at [Date] and of its incoming resources and application of resources for the year then ended."

Under the Charities SORP (FRS 102) and to comply with the Companies Act 2006, a charitable company must prepare a Statement of Financial Activities (SoFA) incorporating an Income and Expenditure Account. If the charitable company's SoFA does not incorporate its Income and Expenditure Account, it must prepare a separate Summary Income and Expenditure Account. The reference to 'income and expenditure' in the charitable company example above refers to these requirements.

In the previous edition of this Guide, the following wording was used in the illustrative report examples:

- "give a true and fair view of the state of the charitable company's/ charity's affairs as at [Date] and of its income [and receipt of endowments] and expenditure for the year then ended."

This wording was used to reflect the terminology in the Charities SORP (FRS 102). However, this edition of the Guide has been amended to reflect current practice.

Accompanying commentary

The illustrative auditor's reports are accompanied by commentary to assist the auditors of a Scottish charities to prepare auditor's reports tailored to the circumstances of their charity clients.

The Guide is not intended to be comprehensive and does not deal with every circumstance. It is therefore not a substitute for the auditor's own judgement or referring directly to standards and guidance issued by the FRC or to the relevant legislation and regulations.

The accompanying commentary provides further guidance on:

- The accounting and reporting framework for Scottish charities.
- The legislative framework for the audit of Scottish charitable companies.
- Preparing auditor's reports for cross-border charities.
- Elements of the auditor's report, including the auditor's responsibilities for the audit of financial statements.

The auditor's responsibilities for the audit of financial statements are set out in the relevant legislation and in ISAs (UK). A description of these responsibilities is included within the auditor's report and there are three options for making this disclosure.

In the UK, the auditor is permitted to cross-refer to the applicable version of a "Description of the auditor's responsibilities for the audit of the financial statements" that is maintained on the website of an appropriate authority and this is the approach followed in the illustrative reports included in this Guide.

The appropriate authority is the FRC

The auditor should not extend their audit work or broaden the matters on which they report in their auditor's report beyond the requirements of the relevant legislation and ISAs (UK) either at the request of their audit client or a third party, for example, a grant

funder or, on the rare occasion where this is relevant, a non-charitable parent.

Please contact the Accounting and Auditing Team via the ICAS Technical Helpdesk, if you are asked to undertake additional audit work or prepare an auditor's report which goes beyond the auditor's responsibilities for the audit of the financial statements.

Location of the Bannerman wording

Reference is made in the accompanying commentary to technical guidance issued by the ICAEW on the location, in the auditor's report, of the Bannerman wording set out in Technical Release (01/03 AAF (Revised): The audit report and auditors' duty of care to third parties (18 May 2018).

In the interests of consistency, the illustrative auditor's report examples in the guidance follow 01/03 AAF.

FRC ISSUES NEW CONSOLIDATED VERSIONS OF FINANCIAL REPORTING STANDARDS

The Financial Reporting Council (FRC) has issued new consolidated January 2022 editions of UK and Ireland accounting standards. These editions reflect the amendments made to the respective documents since the previous editions were issued in 2018, as well as changes in Irish company law, resulting in a single up to date reference point for each standard.

In addition, the FRC has issued revised editions of the Foreword to Accounting Standards and Overview of the financial reporting framework that reflect developments in accounting standards, legislation, and regulation.

The documents issued are:

- Foreword to Accounting Standards;
- Overview of the financial reporting framework;
- FRS 101 Reduced Disclosure Framework;
- FRS 102 The Financial Reporting Standard applicable in the UK and Republic of Ireland;
- FRS 103 Insurance Contracts;
- Implementation Guidance to accompany FRS 103 Insurance Contracts;
- FRS 104 Interim Reporting;
- FRS 105 The Financial Reporting Standard applicable to the Micro-entities Regime.

The newly issued version of FRS 102 incorporates the following changes made since the last version of FRS 102 was issued in March 2018:

- Amendments to FRS 102 – Multi-employer defined benefit plans (May 2019)
- Amendments to FRS 102 – Interest rate benchmark reform (December 2019)
- Amendments to FRS 102 – COVID-19-related rent concessions (October 2020)
- Amendments to FRS 102 – Interest rate benchmark reform (Phase 2) (December 2020)
- Amendments to FRS 102 – UK Exit from the European Union (December 2020)
- Amendments to FRS 102 – COVID-19-related rent concessions beyond 30 June 2021 (June 2021)
- Applicable amendments made since March 2018 to the Reduced Disclosure Framework.

The newly issued version of FRS 105 incorporates the following changes made since the last version of FRS 105 was issued in March 2018:

- Amendments to FRS 105 – COVID-19-related rent concessions (October 2020)
- Amendments to FRS 105 – UK Exit from the European Union (December 2020)
- Amendments to FRS 105 – COVID-19-related rent concessions beyond 30 June 2021 (June 2021).

FRC ISSUES GUIDANCE ON AUDITOR CLIMATE-RELATED REPORTING RESPONSIBILITIES UNDER ISA (UK) 720

The Financial Reporting Council (FRC) has published a new FRC Staff Guidance Note, Auditor

responsibilities under ISA (UK) 720 in respect of climate-related reporting by companies required by the Financial Conduct Authority.

This staff guidance note may assist auditors in determining their responsibilities under ISA (UK) 720 in their audits of financial statements of companies that are required to include climate-related disclosures consistent with the Taskforce on Climate-related Financial Disclosures (TCFD) Recommendations.

The guidance also includes a brief reminder of auditor's responsibilities under ISA (UK) 720 in respect of the company's Streamlined Energy and Carbon Reporting (SECR) disclosures.

The publication has been issued in response to requests from auditors for further guidance on how to meet their responsibilities under ISA (UK) 720 in relation to the newly introduced requirements for TCFD-aligned climate disclosures.

ICAS RESPONDS TO IAASB EXPOSURE DRAFT - INTERNATIONAL STANDARD ON AUDITING FOR LESS COMPLEX ENTITIES

ICAS has responded positively to the International Auditing and Assurance Standards Board's (IAASB) 'Proposed International Standard on Auditing for Audits of Financial Statements of Less Complex Entities (ISA for LCE)'.

ICAS congratulates the IAASB on its progress on this initiative and the work that has been undertaken in getting to this stage and looks forward to the IAASB issuing its finalised standard in due course.

In its response to the IAASB's 2019 discussion paper 'Audits of Less Complex Entities: Exploring Possible Options to Address the Challenges in Applying the ISAs' ICAS set out the following vision as to the roadmap to be adopted in relation to the setting of future International Standards on Auditing (ISAs):

Priority 1 – Develop a separate standard for audits of LCEs based on the key principles in the current ISAs that delivers the same level of assurance and has the same objectives as the current ISA audit.

Priority 2 – The current ISAs should be redesigned and re-drafted to be fully principles-based using a 'plain English' language convention based on the same 'building blocks', or 'think simple first' approach adopted in the development of a separate auditing standard for LCEs.

Priority 3 – In due course, more consideration should be given to converging the two activities above resulting in the ultimate desired option of a single suite of ISAs that can be applied to all audits regardless of size and complexity.

This remains the roadmap that the IAASB should follow. ICAS therefore welcomes the IAASB's publication of its proposed separate auditing standard for LCEs, which is intended to deliver the same level of assurance as an audit undertaken by applying the full suite of ISAs. ICAS views this as a first step towards producing a full suite of standards that are truly proportionate.

ICAS also highlighted that the key change that the IAASB should act on before issuing the standard is not to specifically exclude all groups but rather to consider whether the standard would be appropriate in such circumstances on a basis similar to that applied to standalone entities.

PLIMLICO PLUMBERS – THE FINAL CHAPTER?

After 11 years of being engaged in a legal battle with his ex-employer Pimlico Plumbers, Gary Smith has won his final claim in the suite of different claims he has made against the company. This latest decision by the Court of Appeal, which was handed down on 1 February 2022, concerns itself with holiday pay, and the decision has reversed the decisions in both the EAT and ET. The result is that Mr Smith is now entitled by way of a binding precedent to recover compensation for all the unpaid leave he has taken since his employment started at the rate of pay he was receiving at the time. This has happened because in 2018, the Supreme Court deemed Mr Smith to be a 'worker'.

How the decision came about

The judiciary was unanimous in its decision to uphold the principles laid down in *King* v *Sash Window* [2018] ICR 693 (an ECJ case) which not only entitles workers to claim the indefinite carry over and accumulation of the untaken part of their so-called 'Euro leave' (i.e. 4 weeks per annum) but also to any of that Euro leave which was taken, but was not paid.

Essentially, this means that Mr Smith has been given the right to claim unlawful deduction of wages arrears for up to 4 weeks of the leave he took each year, but was not paid for, at the rate of pay payable in respect of the work he was doing at that time.

Isn't there a limit on the amount of years a worker can claim for unpaid leave?

There is no restriction on the period of Euro leave which can be accumulated because the 2-year limit set out at s.23(4A) of ERA 1996 was set aside by the Court of Appeal – so the employee is not time-barred in the claim they make – unlike with other claims such as Statutory Sick Pay – and the liability for that payment crystallises on termination of employment as long as they bring a claim within 3 months of termination. This will make things much easier [for tribunals] going forward because no-one will have to work out what was taken/untaken/unpaid – it is 4 weeks per annum, full stop, if they are a 'worker'.

It may be that the claimant could also claim interest on the unlawful deduction (see Marshall No.2 [1994] QB 126).

What about claims brought post-Brexit?

In this case, Smith brought his case before Brexit Implementation Period Completion Day on 31 December 2020. This means that the application of the King v Sash Window principles was unquestionable.

But what about post-Brexit claims – can ECJ case law still apply to them?

There are some EU legal principles which point to the Marleasing principle (summarised well in a 2019 Aston University academic paper), a duty to preserve the interpretations placed by the EU directive in accordance with s. 5 EU Withdrawal Act 2018 as far as possible. So, while legal eagles might be trying to find ways to interpret things differently post Brexit, Marleasing seems likely to stand for the time being, which is important for workers bringing cases like this one to the Tribunal post-Brexit.

In addition, under the Working Time Regs. Reg 30, the ERA 1996 provides for someone to claim unlawful deductions from wages within 3 months which are due under WTR. HMRC v Stringer [2009] ICR 985 supports this.

Although Pimlico Plumbers could seek to overturn this decision at the Supreme Court, it seems unlikely. The founder of the company Charlie Mullins has recently sold the business to another entity and they (a US group) may not be interested in engaging with the UK courts so early in their tenure. As things stand, Mr Smith is owed in the region of £74,000.

What does this mean for employers, payrollers and agents?

In the words of the presiding Judge Lady Justice Simler, provided the employer, "...can specifically and transparently show that they gave the worker the opportunity to take paid annual leave, encouraged the worker to take paid annual leave and informed the worker that the right would be lost at the end of the year."

However, if the employer cannot show these specific actions have been taken, workers who have historically been denied any kind of claim for unpaid leave now have a pathway to claim an unlawful deduction of wages, provided they make the claim within 3 months of their leaving date.

Conclusion

If an individual can establish that they are legally classified as a worker, whether the employer agrees or not, the cost could be heavy. Employers and their agents should take the opportunity to review the employment status of anyone working as a self-employed contractor and take advice from a suitably qualified employment law practitioner or an organisation such as ACAS.

COMPANIES HOUSE & HMRC UPDATES

The Register of Overseas Entities

The government is introducing a 'Register of Overseas Entities' to crack down on foreign criminals using UK property to launder money. The new register will require anonymous foreign owners of UK property to reveal their real identities to ensure criminals cannot hide behind secretive chains of shell companies, setting a global standard for transparency. More details can be found here.

Creative Industry Tax Reliefs

HMRC has launched an online form to assist claims to Creative Industry Tax Reliefs. The form checks whether a company meets the basic requirements for relief and prompts the respondent to produce the evidence required to support a claim. Although not mandatory, it will speed up the processing of claims and can be completed by the company or their agent.

Informing HMRC about an option to tax land and buildings

The form has changed so that you can fill it in online and print it and has been updated at section 'Previous exempt supplies'. More details can be found here.

Changes to the Construction Industry Scheme

From April 2022, HMRC is introducing an additional field on the Employer Payment Summary (EPS). Your clients must use this to enter their Corporation Tax Unique Taxpayer Reference (UTR) or COTAX reference number, to claim credit for these deductions. HMRC will reject any EPS submissions which include a claim for CIS deductions but do not include the Corporation Tax UTR. Clients who cannot satisfy the new Corporation Tax UTR validation but need to report anything else will have to remove the claim for CIS deductions and resubmit the EPS.

People with significant control (PSCs)

Companies House have published an updated YouTube video on how to identify a person with significant control (PSC).

Extension to Capital Allowances: Self-Assessment changes for zero-emission car allowance

Business cars capital allowances section has been added for the following Tax Return forms to include a new 'zero-emission car allowance' field:

- Individual
- Partnership
- Trust and Estate
- Trustee Registered Pension Scheme

This means that from 6 April 2022, and for Tax Return 2021 to 2022 onwards, you can use this new field to claim this 100% first-year allowance (for any qualifying expenditure incurred in relation to the purchase of new and unused zero-emission or electric cars).If a business car is also used outside of the business, the claim must be reduced in proportion to the non-business use.

Find more information on business cars and emission threshold rates here.

Extended Loss Carry Back

The Extended Loss Carry Back easement allows companies to make claims to carry back losses of accounting periods ending between 1 April 2020 and 31 March 2022 by a further 2 years. Claims that exceed the £200,000 de minimis must be made in a Company Tax Return. Box 45 on the CT600 is to be filled and you must include details of the carry back claims in the computations accompanying the CT600 and accounts. There is no need to submit amended returns for the periods the extended relief applies to as the claims will be treated as amendments to those returns. The online form should be used for claims below £200,000.

Health and Social Care — National Insurance Contribution increase

The government has announced a new 1.25% Health and Social Care Levy to fund investment in the NHS, health, and social care. The Levy is effectively introduced from April 2022 when the rate of National Insurance contributions for working age employees, self-employed people and employers will increase by 1.25 percentage point and be added to the existing NHS allocation.

From April 2023, the Levy will be formally separated from National Insurance contributions and will also apply to the earnings of individuals working above State Pension age. National Insurance contribution rates will then return to 2021-22 levels and receipts from the Levy will go directly for spending on health and social care.

HMRC are requesting payroll operators put a message for employees on all payslips between 6 April 2022 and 5 April 2023, to explain their increased National Insurance contributions. The suggested wording is "1.25% uplift in NICs funds NHS, health & social care." Neither the message itself, nor the suggested wording, is mandatory.

Penalty Reform for VAT is postponed by nine months

The new penalties for late submission and, or payment of VAT tax returns, along with changes to interest charges have been postponed. The changes, which were due to be implemented from April this year to replace the current Default Surcharge system, will now be introduced on 1 January 2023.

Paying HMRC - QR codes

Taxpayers logged into their HMRC account can now choose to scan a QR code to complete the payment on their mobile device. An HMRC QR code is genuine only if it is presented while logged into their HMRC account via the Government Gateway. Payment details displayed on their mobile banking platform should mirror those shown in their HMRC online account.

The QR code will first be displayed when taxpayers are logged into their HMRC online account through the Government Gateway, on a desktop browser. They will then be able to use their mobile phone to scan the code which will allow them to complete the payment on their mobile.

HMRC will never send a QR code to a taxpayer. If your clients receive a QR code this way, it is a scam.

The Official Rate of Interest for 2022/23 tax year

The Official Rate of Interest, which is used to calculate the Income Tax charge on the benefit of employment related loans and the taxable benefit of some employer-provided living accommodation, will remain at 2%.

National Insurance holiday for employers of veterans

Employers can claim National Insurance Contributions relief for veterans as an employer. Introduced on 6 April 2021, employers who hire former members of the UK regular armed forces during the first year of their civilian employment are eligible for a zero-rate of secondary National Insurance Contributions for up to 12 months. Employers can claim this relief through Real Time Information (RTI) submissions from 6 April 2022 and any earnings of qualifying veterans hired from 6 April 2021 will be eligible for retrospective NICs relief.

Creative Industry Tax Reliefs

HMRC has launched an online form to assist claims to Creative Industry Tax Reliefs. The form checks whether a company meets the basic requirements for relief and prompts the respondent to produce the evidence required to support a claim. Although not mandatory, it will speed up the processing of claims and can be completed by the company or their agent.

Scottish Student Loans Plan 4 — Self Assessment

Plan 4 for Scottish Student Loan borrowers will be included on Self-Assessment tax returns from 6 April 2022. Agents completing a Self-Assessment tax return on behalf of their client should include Plan 4 deductions in their 2021 to 2022 return.

New tax regime for qualifying asset holding companies

Finance Act 2022 introduces a new regime for the taxation of qualifying asset holding companies (QAHCs) and certain payments they make. A qualifying asset holding company must be at least 70% owned by diversely owned funds, or certain institutional investors, and mainly carry out investment activity. Companies that meet the criteria and wish to join the QAHC regime must send an entry notification to HMRC in advance of the joining date.

TECHNICAL BULLETIN

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