



Tax update

December 2016

In this update we report on HMRC's new guidance on client notification regarding Common Reporting Standards, the targeting by HMRC of the UK's richest people and HMRC's progress in reviewing the so-called Panama Papers. We also comment on three recent cases on whether the Tribunal has jurisdiction to entertain an application to provide witness evidence made by a non-party to the appeal, an inheritance tax scheme which succeeded and the *Ramsay* principle in the context of a proposed scheme of arrangement.

News items

HMRC publishes new guidance on client notification under international exchange of information regulations

HMRC has provided new guidance on the obligations placed on UK Financial Institutions and Specified Relevant Persons to send notifications to clients regarding the Common Reporting Standards (and related matters). [more>](#)

HMRC wants £1.9 billion from UK's richest

HMRC is chasing £1.9 billion of tax which it believes is owed by the UK's richest people. HMRC's specialist High Net Worth unit has targeted 6,500 individuals all with individual wealth in excess of £20 million. [more>](#)

Our Man in Panama

HMRC launched in April of this year a criminal and civil "Taskforce" in order to investigate the 11.5 million documents leaked from the Panamanian law firm Mossack Fonseca. [more>](#)

Case reports

Paya Ltd – BBC prevented from submitting evidence in IR35 case

In *Paya Limited and Tim Willcox Limited v HMRC*, the First-tier Tribunal (FTT) held that the BBC could not provide witness evidence of its own motion to the FTT in tax appeals to which it was not a party. [more>](#)

Salinger - IHT scheme succeeds

In *M L Salinger and J L Kirby v HMRC*, the FTT held that the transfer of a reversionary interest had not been a transfer of value for Inheritance Tax (IHT) purposes and allowed the taxpayers' appeal. [more>](#)

Any comments or queries

Adam Craggs Partner

+44 20 3060 6421
adam.craggs@rpc.co.uk

Robert Waterson Legal Director

+44 20 3060 6245
robert.waterson@rpc.co.uk

Michelle Sloane Senior Associate

+44 20 3060 6255
michelle.sloane@rpc.co.uk

About this update

The Tax update is published on the first Thursday of every month, and is written by members of [RPC's Tax Dispute team](#).

We also publish a VAT update on the final Thursday of every month, and a weekly blog, [RPC Tax Take](#).

To subscribe to any of our publications, please [click here](#).

Re Home Retail Group Plc – High Court considers the Ramsay principle in the context of a proposed scheme of arrangement

In *Re Home Retail Group Plc*, the High Court considered the so-called *Ramsay* principle of purposive construction, in deciding whether a cancellation scheme following the sale of a business, to be carried out in connection with a takeover, fell within the anti-avoidance provisions contained in section 641(2A), Companies Act 2006 (CA 2006). [more>](#)

News items

HMRC publishes new guidance on client notification under international exchange of information regulations

HMRC has provided new guidance on the obligations placed on UK Financial Institutions and Specified Relevant Persons to send notifications to clients regarding the Common Reporting Standards (and related matters).

This guidance provides details of prescribed notifications and a standardised covering letter which are to be sent to clients during the period between 30 September 2016 and 31 August 2017.

A copy of HMRC's Exchange of Information Manual – Client Notifications section can be found [here](#).

[Back to contents>](#)

HMRC wants £1.9 billion from UK's richest

HMRC is chasing £1.9 billion of tax which it believes is owed by the UK's richest people. HMRC's specialist High Net Worth unit has targeted 6,500 individuals all with individual wealth in excess of £20 million.

HMRC estimates that around £1.1 billion of this sum relates to the use of tax avoidance schemes. In each case, HMRC assigns a "Customer Relationship Manager" who is charged with "building an understanding of each taxpayer's affairs and behaviours" in order for HMRC to maximise the recovery of tax.

A copy of the National Audit Office Report can be found [here](#).

[Back to contents>](#)

Our Man in Panama

HMRC launched in April of this year a criminal and civil "Taskforce" in order to investigate the 11.5 million documents leaked from the Panamanian law firm Mossack Fonseca.

On 8 November 2016, the government reported that more than 30 individuals and companies are now under active investigation for criminal or serious civil offences linked to tax fraud and financial wrongdoing and that hundreds more are under detailed review.

A copy of the government's announcement can be found [here](#).

[Back to contents>](#)

Case reports

Paya Ltd – BBC prevented from submitting evidence in IR35 case

In *Paya Limited and Tim Willcox Limited v HMRC*¹, the First-tier Tribunal (FTT) held that the BBC could not provide witness evidence of its own motion to the FTT in tax appeals to which it was not a party.

Background

The two appellant companies (the taxpayers) were personal service companies of BBC presenters. They were assessed to income tax and National Insurance Contributions in relation to engagements between the taxpayers and the BBC, under Part 2, Chapter 8, Income Tax (Earnings and Pensions) Act 2003 and the Social Security Intermediaries Regulations 2000, commonly referred to as the IR35 legislation. The taxpayers appealed their assessments and their appeals were progressing before the FTT.

Both HMRC and the taxpayers anticipated calling witnesses who were current or former employees of the BBC. By 2015, HMRC had opened enquiries into about 100 potential IR35 cases concerning companies providing the services of individuals to the BBC and the BBC decided that it could no longer deal with the enquiries on a case-by-case basis and wished to take a more active role in the preparation of witness statements. It wished to submit witness evidence to the FTT about its Editorial Guidelines and how its news room operated.

The BBC applied to the FTT for a direction that evidence from BBC witnesses be prepared and submitted to the FTT by the BBC's legal team rather than by the parties to the appeal. The BBC would retain control over the evidence given by BBC witnesses, who might include individuals not called by either party.

At a preliminary hearing, the FTT was asked to determine whether it had jurisdiction to entertain an application to provide witness evidence made by a non-party (the BBC) of its own motion and not at the request of the parties or the FTT.

FTT's decision

The FTT rejected the BBC's application.

In reaching its conclusion, the FTT analysed the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (the Rules) and concluded that:

- the Rules do not explicitly give the FTT jurisdiction to allow a non-party's application to supply evidence or documents and nor do they provide the FTT with the power to impose sanctions to ensure that person's compliance with any directions issued by the FTT or the Rules
- whilst the Rules require the FTT to avoid unnecessary formality and to seek flexibility in proceedings, the FTT cannot step outside the Rules all together
- although the Rules give the FTT power to regulate its own procedure, that power is limited by the nature of the FTT's jurisdiction and the FTT's adversarial jurisdiction does not permit a non-party to provide witness evidence, unless the person has applied unsuccessfully to be added as a party and the FTT has decided of its own motion that the person should nevertheless be allowed to provide evidence under Rule 9(4) of the Rules.

1. [2016] UKFTT 0660 (TC).

Comment

The BBC's application, if it had been successful, would have undermined the parties' right to put forward their own case as they considered appropriate and the FTT's decision is not therefore surprising. Both the taxpayers and HMRC opposed the application and the FTT was of the view that it is for the parties to decide what evidence they wish to call.

There are of course other ways for a non-party to intervene in a tax appeal before the FTT, such as at the request of either party, or on its own initiative the FTT may direct a non-party to submit evidence, or a non-party may seek to be joined as a party.

Not being party to the proceedings the BBC has no right of appeal against the FTT's decision.

A copy of the decision can be found [here](#).

[Back to contents](#)>

Salinger – IHT scheme succeeds

In *ML Salinger and JL Kirby v HMRC*², the FTT held that the transfer of a reversionary interest had not been a transfer of value for Inheritance Tax (IHT) purposes and allowed the taxpayers' appeal.

Background

Mr Salinger had entered into tax planning arrangements designed to reduce the amount of IHT payable on his death (the Arrangements). The Arrangements involved the transfer of a reversionary interest he held in an Isle of Man trust to the Donald Salinger Family Trust (the DSFT) of which Mr Salinger's children, Michael Salinger and Janice Kirby (the taxpayers) were the trustees. Mr Salinger died on 27 February 2011 and the taxpayers were appointed executors of his estate.

Mr Salinger had transferred £820,000 to the Isle of Man trust which HMRC argued was consideration, at least in part, for the reversionary interest.

The taxpayers' position was that the reversionary interest was excluded property because no consideration had been given for its acquisition. They also argued that in any event there had been no transfer of value when it had been transferred to the DSFT.

On 11 February 2015, HMRC issued determinations to the taxpayers on the basis that IHT was due in relation to the transfer of the reversionary interest to the DSFT. The taxpayers appealed the determinations.

FTT's decision

The following two questions fell to be determined by the FTT:

- had any consideration in money or money's worth been given for the reversionary interest; and if it had
- was there a loss to Mr Salinger's estate when the reversionary interest was transferred to the DSFT.

In determining the first question in the affirmative, the FTT considered that the reversionary interest did not meet the exclusion set out in section 48(1), Inheritance Tax Act 1984, that:

2. [2016] UKFTT 677.

“a reversionary interest is excluded property unless it has at any time been acquired ... for a consideration in money or money’s worth”.

The FTT found that Mr Salinger had acquired the reversionary interest as part of a package of rights for which he had paid a total sum of £890,000 (part of which were arrangement fees). The reversionary interest was not therefore excluded property. The interest had, however, been an “empty shell”, similar to the “B” shares in *HMRC v Arrowtown Assets Ltd*³, and served no other purpose than to facilitate the avoidance of paying IHT. The so-called *Ramsay* test⁴, was found to have been satisfied in that the relevant statutory provision, construed purposively, was intended to apply to the transaction viewed realistically.

Although there had been no allocation of the purchase price between the different elements of the package, it was sufficient that consideration had been given.

With regard to the second question, the FTT concluded that the transfer of the reversionary interest had not prevented Mr Salinger accessing the trust fund as a matter of right because he had remained the only income beneficiary. As there had been no loss to Mr Salinger’s estate as a result of the transfer there had not been a transfer of value.

The Isle of Man trust was held in cash rather than an investment which would either fluctuate in value or take time to realise and was available at any time, this further emphasised that there had been no loss to Mr Salinger’s estate. It followed that the transfer of the reversionary interest to the DSFT was not a transfer of value as there was no monetary loss to Mr Salinger’s estate.

The appeal was therefore allowed.

Comment

Although legislation has since been introduced which prevents this type of planning⁵, in allowing the taxpayers’ appeal, the FTT confirmed that the so-called *Ramsay* approach (which applies to legislation) does have limitations and is not relevant to basic legal principles such as those which underpin the principle of *Saunders v Vautier*⁶ which is not a rule of construction but depends on the proposition that the beneficiaries of a trust are collectively the beneficial proprietors of the fund and as such may require the trustees to transfer the legal estate to them and thereby terminate the trust. This limitation may be of wider significance in the context of other tax planning arrangements.

A copy of the decision can be found [here](#).

[Back to contents>](#)

Re Home Retail Group Plc – High Court considers the Ramsay principle in the context of a proposed scheme of arrangement

In *Re Home Retail Group Plc*⁷, the High Court considered the so-called *Ramsay* principle of purposive construction⁸, in deciding whether a cancellation scheme following the sale of a business, to be carried out in connection with a takeover, fell within the anti-avoidance provisions contained in section 641(2A), Companies Act 2006 (CA 2006).

Background

Home Retail Group plc (the Company) intended to dispose of its Homebase business and make a capital return to its shareholders of the net cash proceeds of the sale. Before the sale had

3. [2003] HKCPA 46.

4. *WT Ramsay Ltd v IRC* [1982] AC 300.

5. Legislation designed to block similar planning was introduced by section 210, Finance Act 2012 (inserting section 7A into Inheritance Act 1984).

6. [1841] EWHC Ch J82.

7. [2016] EWHC 2072 (CH).

8. *WT Ramsay Ltd v IRC* [1982] AC 300.

been completed, the Company reached agreement in principle on a takeover by J Sainsbury Plc (Sainsbury). The consideration that the bidder was to pay took into account that the Company would be returning £200m to shareholders.

The arrangements were to be effected in various stages as follows:

First, there would be a scheme of arrangement under which a new company, Sainsbury's Intermediate Holdings Limited (Newco), would become the Company's holding company, with the Company's existing shareholders obtaining corresponding holdings in Newco.

Second, there would be a reduction of capital of Newco to effect the previously announced return to shareholders.

The third stage was that shares in Newco would be transferred compulsorily to Sainsbury in accordance with Newco's articles of association.

The Company sought permission from the Court to convene a shareholders' meeting for the purpose of considering a scheme of arrangement under Part 26, CA 2006 and, subject to shareholder approval, an order sanctioning the scheme. In particular, the Company required confirmation that the arrangements did not fall within the anti-avoidance provisions in section 641(2A), CA 2006, which prohibit a company from reducing its share capital as part of a scheme of arrangement where the purpose of the scheme is to acquire all the shares of the company, except where the acquisition amounts to a restructuring that inserts a new holding company into the group structure.

The Court had previously made an order giving the Company permission to convene a shareholders' meeting but had declined to express a view on the applicability of section 641(2A) until HMRC had had an opportunity to consider the implications of the proposal. The Company therefore contacted HMRC concerning the arrangements prior to the hearing and HMRC confirmed that it had no observations or comments to make.

High Court judgment

Sections 641(2A) to (2C), CA 2006, are intended to prohibit reductions in share capital by target companies in takeovers using schemes of arrangement in order to protect the stamp duty base. Section 641(2A) provides that a company may not reduce its share capital as part of a scheme by virtue of which broadly, one or more people are to acquire all the shares in the company. The provisions provide for an exception which is contained in section 641(2B)(2)(a). The question for determination by the Court was whether that exception was applicable to the arrangements under consideration.

The Company argued that the exception applied because the proposed scheme involved the Company having a new parent undertaking (ie Newco), that all or substantially all the members of the Company would become members of Newco and that the shareholders' shareholdings in Newco would correspond to those that they had held in the Company.

The Company contended that the *Ramsay* approach to statutory interpretation should not be applied to section 641(2B), CA 2006, as the transactions with which the Court was concerned had a real commercial purpose.

In granting the order sought, the Court did not find it necessary to confirm whether the *Ramsay* principle would be applicable to the legislation under consideration. It stated at paragraph 14:

“Should the *Ramsay* principle be capable of applying to section 641 (2B), it must nevertheless, as I see it, be the case that it will not bite on a cancellation scheme which is part of a real world transaction having a clear commercial and business purpose. The cancellation scheme envisaged here seems to me to be of that type.”

Comment

The Court was of the view that the exception contained in section 641(2B) applied to the scheme if the subsection was read literally, but the question it had to consider was whether the *Ramsay* principle of purposive construction would produce a different result. The Court said that it was arguable that the *Ramsay* principle had no application to the legislation under consideration, but in any event even if it did, it would not bite on a cancellation scheme which was part of a real world transaction and which had a commercial and business purpose.

[Back to contents>](#)